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Preamble.

The Preamble was put and carried.

* The Hon. Mr. P. T. RAJAN:—"I now beg to move that the Bill be passed into law."

The Hon. the RAJA OF BOBBILI:—"I second it."

The motion was put and carried and the Bill was passed into law.

IV.—ACT ASSENTED TO BY HIS EXCELLENCY THE GOVERNOR.

* The Hon. the PRESIDENT:—"I have to announce that the Madras Impartible Estates (Amendment) Act, 1934, received the assent of His Excellency the Governor on the 6th March 1934."

V.—A BILL TO FACILITATE THE WORKING OF CO-OPERATIVE LAND MORTGAGE BANKS IN THE PRESIDENCY OF MADRAS (BILL No. 5 OF 1933).

* The Hon. Mr. P. T. RAJAN:—"I beg to present the Report ^a of the Select Committee on the Bill to facilitate the working of Co-operative Land Mortgage Banks in the Presidency of Madras (Bill No. 5 of 1933) and move that the Bill, as amended by the Select Committee, be taken into consideration."

The Hon. the RAJA OF BOBBILI:—"I second it."

The motion was put and carried.

Clause 1.

* The Hon. Mr. P. T. RAJAN:—"I move, Sir—

'that in line 2 of clause 1, the figures "1933" be substituted by the figures "1934."'

The Hon. the RAJA OF BOBBILI:—"I second it."

The amendment was put and carried.

Clause 1, as amended, was put and carried.

Clause 2 was put and carried.

Clause 3.

* The Hon. Mr. P. T. RAJAN:—"I beg to move—

'in clause 3—

"(i) for sub-clause (c), substitute the following:—

'(c) "Committee" means, in relation to a mortgage bank, the board of directors or board of management or the panchayat or the committee of management or the governing body to whom the management of its affairs is entrusted.'

^a Published in the Fort St. George Gazette, dated 13th June 1933.

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(ii) for *sub-clause (f)*, substitute the following:—

‘(f) “Registrar” means the person appointed by the Local Government to be Registrar of Co-operative Societies for the Presidency of Madras under section 3 of the Madras Co-operative Societies Act, 1932.’

(iii) for *sub-clause (g)*, substitute the following:—

‘(g) “Sale Officer” means the officer appointed under section 21, as the case may require.’ ”

With reference to item (i) of the amendment it is desirable that the same definition as is used in the Madras Co-operative Societies Act should be used here also. That is why this amendment is proposed.

“Item (ii) is for the purpose of making the definition more clear.

“With reference to item (iii), the object is to make the definition simple.”

The Hon. the RAJA OF BOBBILI:—“I second it.”

* The Hon. the PRESIDENT:—“Am I to understand that the Hon. Member has omitted ‘section 11 or’ in item (iii)?”

The Hon. Mr. P. T. RAJAN:—“Yes, Sir.”

* The Hon. the PRESIDENT:—“In that case, perhaps the words ‘as the case may require’ may also be omitted in item (iii).”

Rao Bahadur T. A. RAMALINGAM CHETTIYAR:—“May I suggest, Sir, that item (iii) may stand over? In view of a further amendment which the Hon. the Minister is going to move, the words ‘section 11 or’ may become unnecessary here. If that amendment is not carried, these words will have to remain here; but if that is passed, they may have to be omitted. I therefore suggest that items (i) and (ii) may be passed now and item (iii) may stand over.”

* The Hon. the PRESIDENT:—“I think it is agreed that item (iii) should stand over. I shall now put items (i) and (ii) to the vote of the House.”

Items (i) and (ii) of the amendment were put and carried.

* The Hon. the PRESIDENT:—“Clause 3, as amended, will stand over.”

Clause 4.

Sub-clause (1) (a).

* The Hon. Mr. P. T. RAJAN:—“Sir, in clause 4, I move—

‘that in sub-clause (1) (a), the words “and of the other properties of such bank” be added at the end.’

“This is with a view to vest the other properties of the bank also in the trustee referred to in clause 5 of the Bill; and debentures may also be issued on the security of such other properties. In that view, I move the amendment.”

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The Hon. the RAJA OF BOBBILI:—" I second it."

The amendment was put and carried.

Sub-clause (1) (b).

* The Hon. Mr. P. T. RAJAN:—" Mr. President, Sir, I move that— 11-15 a.m.
' (i) in line 3, for the words " such debentures," substitute the word " they."

(ii) in lines 7-8, after the words " three months' notice " add the words " in writing " " "

The amendment was put and carried.

Sub-clause (2).

* The Hon. Mr. P. T. RAJAN:—" Mr. President, Sir, I move that—
' in lines 3-6, for the words " shall not exceed the total amount due on mortgages— for the time being and other assets," substitute the words " shall not exceed the total amount due on the mortgages, the amounts paid thereunder and remaining in the hands of the Board or of the trustee at such time and the value of all other assets." ' "

" This amendment is intended to include within the limits laid down not only the amounts remaining in the hands of the Board but also those that are in the hands of the trustee to make the whole clause more clear."

Diwan Bahadur M. RAMACHANDRA RAO:—" I second it."

The amendment was put and carried.

Clause 4, as amended, was put and carried.

Clause 5.

* The Hon. Mr. P. T. RAJAN:—" Mr. President, Sir, I move that—
' (i) in lines 9-13, for the third sentence, substitute the following:—

" The holders of the debentures shall have a floating charge on all such mortgages and assets on the amount paid under such mortgages and remaining in the hands of the Board or of the trustee and on the other properties of the Central Mortgage Bank." ' "

" The holders of debentures have a floating charge on all mortgages and assets and properties of the Central Mortgage Bank. This amendment is intended to make the point more clear."

Diwan Bahadur M. RAMACHANDRA RAO:—" I second it."

The amendment was put and carried.

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* The Hon. Mr. P. T. RAJAN:—" Mr. President, Sir, I beg to move that—

(ii) *in the last sentence, omit the words and brackets " [referred to in appendix], "*

(iii) *in line 16, for the word " Board," substitute the word " Bank." "*

Diwan Bahadur M. RAMACHANDRA RAO:—" I second it."

Diwan Bahadur B. MUNISWAMI NAYUDU:—" Mr. President, Sir, I do not understand the position of Government. We have yet to hear what the reasons of the Government are for omitting the draft trust deed annexed to the Bill.

" As regards the trust deed may I state that there are supplemental trust deeds executed to suit the circumstances of each case and it has been found necessary to amend the trust deeds from time to time and the question of amendment has been under consideration for some time past and I believe that the Registrar has placed the whole matter before the Government and the matter is now under consideration by them. It was pointed out in the Select Committee that preferential legislation should be avoided. After all the trust deeds are executed between the Registrar and the Central Bank, I think it would be of no value whatever to have a model deed as this printed as an appendix and its omission will not materially affect this legislation."

* Mr. V. T. ARASU:—" Mr. President, Sir, I am not convinced that there is any necessity for the amendments moved by the Hon. the Second Minister. The point raised by my hon. Friend, Mr. Muniswami Nayudu, was whether there is any necessity for omitting the words 'referred to in the appendix.' I think that point has not been met by the Expert Member who spoke just now. I would therefore request the Hon. Minister to plainly and clearly explain to this House as to what would be the effect if these words are retained and what purpose would be served by removing these words. I want a clear explanation from the Hon. the Minister."

Diwan Bahadur M. RAMACHANDRA RAO:—" It is proposed to omit the form of trust deed altogether from the appendix. We went into this question in the Select Committee just at the last stage of the proceedings of the Committee and the trust deed has been printed as a result of a suggestion made at the time. Afterwards we found on examination that the form of the trust deed such as that printed in the appendix would not do for there are a number of conditions in accordance with which the trust deeds have to be executed. As I said the whole question is under examination both by the Government and the Registrar. In view of the experience that has been gained new trust deeds would be required. And it will not be a correct proceeding to print a trust deed which is out of date. I venture to think therefore that nothing would be lost if the trust deed is omitted for the Bill and the reference to it in clause 5 is also omitted."

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Diwan Bahadur B. MUNISWAMI NAYUDU:—"The object of having this appendix seems to be to have a sort of model trust deed appended to the Bill. At the same time it is provided in clause 6 that the trust deed can be modified from time to time by mutual agreement between the Board and the Trustee. The deed as it stands would be the basis for further alterations between the trustee and the bank by mutual agreement. I do not see why the intention of this appendix is objected to."

The amendment was put and carried.

Clause 5, as amended, was put and carried.

Clause 6.

* The Hon. Mr. P. T. RAJAN:—"Mr. President, Sir, I move—
'that for clause 6 the following be substituted:—

"6 (1) *Save as otherwise provided in sub-section (2), the principal and interest on the debentures issued under section 4 shall carry the guarantee of the Local Government subject to such conditions as they may think fit to impose.*

(2) *The Local Government may, after consulting the Board and the Trustee*

(a) *by notification in the Fort St. George Gazette; and*

(b) *by notice for not less than 14 days in such of the principal newspapers in the Presidency of Madras and of the other Provinces in British India as the Local Government may select in this behalf*

discontinue the guarantee referred to in sub-section (1) or restrict the extent thereof or modify the conditions subject to which it is given, with effect from a specified date, not being earlier than six months from the date of publication of the notification in the Fort St. George Gazette.

In cases where the extent of guarantee is to be restricted or the conditions subject to which it is given are to be modified, the notification and the notice aforesaid shall set forth with sufficient clearness the scope and effect of the restriction or modification.

Explanation.—*The withdrawal, restriction or modification of any guarantee under this sub-section shall not affect in any way the guarantee carried by any debentures issued prior to the date on which such withdrawal, restriction or modification takes effect."*

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“ Clause 6 as passed by the Select Committee guarantees the principal and interest indefinitely. By this amendment the Government have taken powers to withdraw their guarantee if it is found necessary, when the bank has no need for the financial help of the Government and secondly the procedure is laid down, if Government wishes to make changes what lines should be followed in giving effect to this change. I hope the House will accept the amendment.”

The Hon. the RAJA OF BOBBILI:—“ I second it.”

11-30
a.m.

Diwan Bahadur B. MUNISWAMI NAYUDU:—“ Mr. President, Sir, I move the amendment standing in my name:—

‘ To the amendment proposed to be moved by the Hon. the Minister, add at the end of sub-clause (1) the following:—

“ The Government shall fix the maximum amount up to which such guarantee shall operate and may increase the amount from time to time. The Government shall lay its proposals to extend the amount of guarantee after the passing of this Act by a motion before the Legislative Council and shall consider its opinion before final orders are passed.” ’

“ Sir, it will be seen that this section is the pivot of the whole Bill, because the mortgage bank has to function only on the guarantee of the Government. The original Bill as introduced guaranteed only interest and it also went further that such guarantee should be extended from time to time by the Government subject to the approval of the Local Legislative Council. When the section went before the Select Committee, they dropped the question of the approval of the Legislative Council, but they added the guarantee of principal also, so that hereafter the Board would issue the debentures and the Provincial Government would see that principal and interest are guaranteed. It is rather extraordinary that the local Legislative Council should have no voice in the finances of the Government and over the acts of the Board. The only thing provided is, that the Registrar of Co-operative Societies, who is the representative of the Government, will be the trustee who will be in charge of the debentures that are issued by the bank. Sir, I should think that if the finances of the Local Government are to be committed in this manner unconditionally, the Local Legislative Council should have a voice from time to time and it should be in a position to review the administration of these banks, to consider to what extent the banks have been running in the right direction and to see whether it is advisable to give further guarantees so far as the debentures are concerned. Though the Hon. the Minister signed the report of the Select Committee without a minute of dissent, the Government evidently

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seems to have examined the section and are now of the opinion that it is the right of Government to lay such conditions as they think fit before seeing how the guarantee operates, that it is the right of Government to vary the functions and that it is the right of the Government to drop the guarantee from time to time. Now, Sir, all that we ask for is—and it was also the intention of the original Bill—that before guarantee is extended from time to time to cover future debentures that might be issued, the matter should come before the Legislative Council in the form of a proposal by the Government. My amendment merely says that the opinion of the House as expressed on that motion should be considered by the Government before Government finally approve of the further issue of debentures. The Bill originally introduced even went further and wanted the affirmative approval of the Legislative Council for such extension, whereas my amendment merely wants that the opinion of the Council should be taken by the Government before they approve of it. We do not want that the hands of the Government should be tied. My hon. Friend from Coimbatore who represents the co-operative societies wants even affirmative approval of the Council. So far as my amendment is concerned, the Local Government have already given a guarantee with regard to interest and before that guarantee was given the proposal did come before the Legislative Council and we approved of it. The effect of the present amendment is that in addition to the guarantees already given to debentures issued already, so far as the debentures issued after the passing of this Act are concerned, the finances of the Province ought to stand guarantee and that before those proposals are approved by Government, they should come up before the Legislative Council, and the Council should express its opinion and later on Government may pass such orders as they think fit. As I said, my amendment is not so drastic as the original Bill itself and I therefore hope that Government will see their way to accept the amendment, especially as by their own amendment they are trying to take power in respect of the continuance of the guarantee on such conditions as they might think fit. This is an important matter and involves the charging of the revenues of the Government for debentures to be issued by the Board, though no doubt two members of the Board, one the Registrar of Co-operative Societies and another person appointed by Government, are there to represent the interests of Government; but that by itself would not sufficiently carry the influence of Government. The Board will certainly be constituted by other members who may out-number and out-vote the Registrar. I think, therefore, it is in fairness to this House that before the Provincial revenues are charged to guarantee not merely interest but also principal, the Council should be taken into the confidence of the Government from time to time, before further debentures are issued and before committing themselves in respect of such debentures to guarantee from out of the Provincial revenues both principal and interest. With these words I commend the motion for the acceptance of the House.”

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* Dr. P. SUBBARAYAN:—" Mr. President, I second the amendment so ably moved by my hon. Friend, Mr. Muniswami Nayudu, because I think that the finances of the Government ought not to be committed by one stroke of legislation as it is being done in this case. Even originally when the Government guaranteed interest for the amount raised by debentures by the land mortgage bank, the Government did come before this House and get its affirmative approval before they committed themselves to that measure. All that this amendment provides is that they should at least consult the Council before they commit themselves and the finances of the Province to this extent. I think that is a necessary restriction and ought to commend itself to the other Members of the House, because after all we are the representatives of the people here—no doubt Government have their own responsibility—but at the same time I think the Government will do well to get the advice of the Legislature before they commit themselves to private agencies of this kind and though they may be started under Government auspices, still they will be private societies controlled by private and ordinary individuals. Therefore, I do not think my hon. Friend, Mr. Muniswami Nayudu, has gone farther than necessary when he suggested this amendment. As my hon. Friend, Mr. Ramalingam Chetti, suggested, I would far rather have the clause amended in such manner as to get the affirmative approval of this Council before Government commit themselves in matters of guaranteeing both principal and interest in the case of debentures being raised by these land mortgage banks."

* The Hon. Mr. P. T. RAJAN:—" Mr. President, I am very glad to see that so much concern about public funds is being shown by hon. Members opposite. After all the Government, if not of the present day, at least of the future, will be the representative of the people and they will be there as the watch-dogs of the finances of the Province. Now, the Government is represented very strongly on the bank by its Registrar and one other nominated member and I think that the interests of the Government and the interests of the public are safeguarded, but I do not object to the amendment of my hon. Friend, Mr. Muniswami Nayudu, that an opportunity should be given to the Legislative Council before Government extend its guarantee to further amounts. I shall be glad to accept the amendment of my hon. Friend, Mr. Muniswami Nayudu."

Diwan Bahadur M. RAMACHANDRA RAO:—" Mr. President, I should like in this connexion to make one or two observations as regards the exact position—not that I am against the amendment of my hon. Friend, Mr. Muniswami Nayudu—and that is this. How far has the Government any real voice in the control of the land mortgage bank? That question has been raised and then a statement has been made that the trustee may be overruled by the Board or the members of the Board. In regard to this, I should like to point out, that under our by-laws

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and under the terms of this Bill, for the flotation of all new debentures, we should take the permission of the Registrar; the rate of interest and the amount are all suggested by the Board, but the final voice is with the trustee who is appointed by the Government and the trustee, at present, is the Registrar of Co-operative Societies. Therefore, the most effective control over the flotation of debentures, fixation of the rate of interest and the extent of the issue of debentures, is in the hands of the Government through its officers. That is one point.

“ Secondly, I should also point out, that in the Board itself the Registrar is an ex officio Member and in addition to him, there is a nominee of the Government on the Board and apart from these two, a further arrangement has been come to between the Government and the Board—I do not think it will be pushed through very soon—by which another nominee should also serve on the Board. Therefore, there are three men on the Board watching the interests of the Government. There is absolutely no fear that the interests of the Government and the public would suffer in any manner whatever by the guarantee that is being given. (Mr. P. V. Krishnayya Choudari: ‘ We do not expect that so long as you are there.’) According to the present system, we have ample guarantee for the safety of the bank and we are perfectly satisfied with the guarantee of interest. In the long correspondence that took place between the Government of India and the Madras Government for whose backing up in this matter, we are very grateful, the Government of India have suggested that until principal and interest are guaranteed they won’t declare these debentures as trustee securities and that is the reason why both principal and interest have now to be guaranteed. The essential feature of these debentures is that they must be in circulation as easily as Government paper and that is the reason why these proposals have been made. I am looking forward to the time when there will be no difference whatever between the Government and the Legislature and the members of Government will be entirely responsible to the Legislature. My friend says that they should have a voice. It means that their own nominees would run the Government which will have the fullest confidence of the legislature. Therefore, I do not think there will be any difficulty whatever. All that I am anxious to see is that when you create a security on the collective responsibility of the lands it should be as easily negotiable and easily acceptable to the general public as other gilt-edged securities. Therefore it is that we have proposed this section and if my hon. Friend, Mr. Muniswami Nayudu, thinks that there should be discretion to the Legislative Council, by all means there is no objection, but there will be also some difficulty in that. For instance, we have floated last year about 76 series of debentures gradually reducing rates of interest and if the reference to the Legislative Council involves any delay in the flotation of debentures, we may be rest assured that that would be one way of negating the good work that is being done by the introduction of this Bill. I have

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nothing more to say except that we are grateful to the Madras Government for the stand that they have made. I understand that a Bill would be shortly introduced in the Legislative Assembly for amending the Indian Trusts Act. After three years of serious struggle, in the end, I am very glad that the Madras Government have been able to persuade the Government of India to accept their proposal and now to consent to the guarantee both of principal and interest for the purpose of getting the debentures declared as trustee securities."

* Rao Bahadur Sir A. P. PATRO:—"Mr. President, I am glad that the hon. Member Mr. Muniswami Nayudu's amendment was wisely accepted by the Government. But for that, there would have been great controversy in regard to the matter as there would be in regard to two other matters.

11-45
a.m.

"The whole Bill is framed in such a manner that I cannot congratulate the Government. We have to judge by the results and we have been judging it by what the results are in connexion with the Co-operative department. The working of the department in the mufassal has not been a success."

* The Hon. the PRESIDENT:—"May I request the hon. Member to reserve his congratulations to the third reading?"

* Rao Bahadur Sir A. P. PATRO:—"I am doing the other way. I am speaking on the contrary. From that point of view I prefer to leave the work to the hon. Member from Coimbatore, who pretends to be the expert and I leave the congratulations to him. I leave it to the Expert Member who has been kind enough to take the trouble to help the Council with his expert advice. Now he has assured us in his characteristic language, said in a patronizing way: 'You people be satisfied with this. We shall do everything for the purpose of getting through this Bill' and so on he gives his advice. But we have to do our humble part in trying to see that a perfect piece of work comes out of this Council which is worthy of this Council. Well, we are indebted to him for his assistance. But we are entitled to suggest amendments which are to have very far-reaching effects. I cannot congratulate the Government and the Finance Department that they have guaranteed the interest and the principal under the Bill. I think the Finance Department has been too generous in the matter with the people's money. They should have been more careful. Well, the Finance Department has been usually careful, but it is not fair and it is not very cautious in the matter of guarantees. The Bill, as it stood, was quite different from what is given notice of here. The Hon. Minister's amendment was quite different from what the clause as it stood was and but for the amendment which has been proposed by Mr. Muniswami Nayudu, there would have been a complete surrender of the whole power to the board and the trustee and we are asked to accept whatever recommendation they may make. That is what the Expert Member has asked us to do, viz., whatever the board does, the Government is represented by the

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Registrar and the public is represented by a Member and when the two are represented there, whatever decision they come to must be accepted as *ipse dixit*. That is too much even for Mr. Ramachandra Rao to expect this Council to do. What we want is that, whenever the guarantee is given, this House should have an opportunity of discussing the whole question and therefore the Minister has very rightly accepted the amendment. I do not see how any further explanation from the Expert Member enlightens us or leads us anywhere in this matter."

* Rao Bahadur T. A. RAMALINGAM CHETTIYAR:—"I am sorry the hon. Member from Berhampur has interceded in the debate without really reading the matter placed in his hands. Sir, the amendment moved by the Government does not give the *carte blanche* to the Central Land Mortgage Bank at all. As a matter of fact they are saying that from time to time they are going to impose conditions and they would consider whether they could continue the guarantee or not. They can even stop the guarantee altogether. If the hon. Member from Ganjam has seen the order paper circulated . . ."

* The Hon. the PRESIDENT:—"The hon. Member may address the Chair and speak louder please."

* Rao Bahadur T. A. RAMALINGAM CHETTIYAR:—"So, Sir, the amendment that is proposed by the Hon. the Minister makes provision for it. I was one of those who thought that any help that is given to the Central Land Mortgage Bank should come before this House from time to time and whenever it is given any facilities the matter should require the positive approval of this House. I have also annexed a minute of dissent to the report of the Select Committee. It has been said by the hon. Member for Ganjam that I did not want any restrictions and that I wanted in a patronizing way or otherwise to give *carte blanche* to the Bank or any other institution. On the other hand I wanted that the matter should come before the Legislative Council and that it should also receive its positive approval. Now, Sir, the amendment moved by the Hon. Minister, as amended by Mr. Muniswami Nayudu, makes the position not quite the same but very near that. The matter comes before the Legislative Council and it will be debated upon before the Legislative Council and the position of the Province as well as the position of the Land Mortgage Bank will be discussed by the Council and the opinion of the Council will be expressed and that will be taken into consideration by the Government. I take it, Sir, that the Government which hears the views will, to a large extent, be led by the views expressed in the Legislative Council and the opinion expressed by the vote of the Legislative Council. There is no fear that this Council will be ignored, nor that it will not be given an opportunity to discuss matters. So, I am glad that the Hon. Minister has accepted the amendment of Mr. Muniswami Nayudu. I am glad that, though it does not go theoretically to the extent I wanted it to go, still the object is achieved. I am very glad to support the amendment,"

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* MR. A. RANGANATHA MUDALIYAR:—"I think I must dissociate myself from the remarks made by my hon. Friend, Sir Parasurama-doss Patro, with regard to the Expert Member. So far as I could see, there was nothing wrong in the tone of the speech. He adopted no condescending spirit and, I think further, that some of the statements attributed to him by my hon. Friend, Sir Patro, were not made by him. Coming to the amendment, Sir, I want to ask the Hon. Minister whether he has satisfied himself that there is no objection to his accepting the amendment proposed by my friend, Mr. Muniswami Nayudu. You may remember that, time and again, whenever the Council wanted to introduce a provision that the rules under any Act should be placed before the Council for approval, the Government felt that the Government of India would not consent to a rule of that sort which would enable the Council to interfere with the operation of the statute after it had been once passed and always opposed the introduction of such a provision. I personally agree that the Legislative Council should have the power. But what I am concerned with is whether the Hon. Minister is sure that there will be no objection to his accepting the amendment proposed by Mr. Muniswami Nayudu. The new clause will bring the Act again and again before the Legislative Council and it is for the Government constituted as it is to say how far it is able to accept the implications. I should, therefore, like to know whether the Hon. Minister has secured the consent of the Government of India, or has otherwise satisfied himself that there would be no objection to the provision being made part and parcel of this Act."

* MR. BASHEER AHMED SAYEED:—"Mr. President, Sir, the amendment, at any rate the first part of the amendment, of the hon. Member from Chittoor seems to be not in consonance with the scheme of section 4. Section 4 gives the power to issue debentures up to a limit of its total assets. The assets have been described by the amendment that has just been accepted, viz., the total amount due on the mortgages, the amounts paid thereunder and remaining in the hands of the Board or of the trustees at such time and the value of all other assets. That gives the power, Sir, to the Board to issue to the maximum limit that is to the extent of the total of the assets. To that extent the Board has the power to issue debentures. Now, Sir, the first portion of the amendment of the hon. Member from Chittoor says: The Government shall fix the maximum amount up to which such guarantee shall operate and may increase the amount from time to time. Does it mean that although the Board may issue debentures up to the maximum amount possible and cover the total assets, Government will fix the maximum according to their discretion? Does it not give rise to a curious position? The power of fixing the maximum, if it is left to the Government, will mean that Government can fix 75 per cent of the total value of the debentures and then the 25 per cent will go without any guarantee. If that were not contemplated thus there is another incongruity which

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I wish to point out. Clause I says: The principal and interest on the debentures issued under section 4 shall carry the guarantee of the Local Government subject to such conditions as they may think fit to impose. I say that, proviso 2 really covers the case of the first portion of Mr. Muniswami Nayudu's amendment. Sub-clause (2) definitely lays down the conditions and restrictions. But for the ordinary debenture holder the amendment that has already been carried with reference to section 4 says the holders of the debentures shall have a floating charge on all mortgages and assets, on the amount paid under such mortgages and remaining in the hands of the Board or of the Trustee and on the other properties of the Central Mortgage Bank. The first thing is that the debenture holder has a floating charge on the total amount that is available through the central bank. The next clause says that the central bank is empowered to issue debentures to the total amount of the assets. Then the limitation comes that the Government can fix a certain maximum. That does not give any security for all the security-holders. Government must be able to guarantee for all the debentures that have been issued in conformity with the conditions laid down in clause 4. If at all this clause is going to be amended then the power of the Board should be limited to this extent that it shall issue debentures only to the extent to which it is guaranteed by the Government. If you say that the Board shall have power up to the total amount of the assets and then say that the Government shall guarantee it then alone will it give the necessary guarantee to the debenture holders. If you say that only a portion of the debenture is to be guaranteed by the Government that will not encourage the proper or efficient functioning of the bank. Either the Government must come forward and say that they will guarantee the whole amount or remove the condition fixing the maximum limit. It will not be in the interests of the proper administration of bank if there are to be two kinds of debentures guaranteed and not guaranteed. There must be uniformity in the value and nature of the debenture to inspire confidence in the public. Now, Sir, from another point of view also, the first portion of the amendment of the hon. Member from Chittoor seems to be unnecessary, because in the amendment of the Hon. Minister it is clearly stated that the Local Government may, after consulting the Board and the Trustee, and satisfying the conditions laid down in 6 (2), discontinue the guarantee referred to in sub-section (1) or restrict the extent thereof or modify the conditions subject to which it is given, with effect from a specified date and so on. When this portion is retained, it is unnecessary to have the first portion of the amendment of the hon. Member from Chittoor. It may be omitted.

"I have nothing to say to the second portion of his amendment. It is a salutary provision and must be retained.

"As regards the first portion of it, I must say again that it is objectionable on the ground that it will not give sufficient amount of

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security to the debenture holders or the public and it is also unnecessary as it will not give larger facilities to borrowers. I therefore propose that the first portion of the amendment be omitted."

Mr. T. S. RAMASWAMI AYYAR:—"Sir, I desire to support the amendment moved by my hon. Friend, Mr. Muniswami Nayudu. My reasons are that, in a matter like this which is in the general interests of the public, the policy of the Government should be to hasten slowly. I think they have done rightly in going through the process of helping the land mortgage banks slowly, first guaranteeing interest and then taking up the question of guaranteeing the capital. Sir, the Legislative Council should certainly be anxious that any proposal which the Government may make with regard to guarantee should come before the Council. This is not the first time that the Legislative Council has expressed its anxiety to have the commitments made by Government in regard to financial matters placed before it. Even the amendment as it stands does not give power to the Legislative Council to upset any proposal which the Government may make. After all, what is now asked from Government is that they should lay their proposals. . ."

* The Hon. the PRESIDENT:—"May I point out to the hon. Member that the Government have already accepted the amendment of Mr. Muniswami Nayudu?"

Mr. T. S. RAMASWAMI AYYAR:—"Sir, I am only trying to answer some of the points raised by Mr. Basheer Ahmed Sayeed. The hon. Member stated that so far as guarantee by the Government is concerned, it should cover the whole of the debentures. I may tell him that the whole amount is not guaranteed for the reason that the Government do not want to interfere with the autonomy of the land mortgage banks. Certainly the Legislative Council is entitled to have its views placed before the Government."

* Diwan Bahadur B. MUNISWAMI NAYUDU:—"Sir, as the Government have already accepted the amendment, I only want to say that so far as the suggestion of Mr. Basheer Ahmed Sayeed is concerned, I do not see where the difficulty arises. The Bill will anyhow be further examined."

* The Hon. Mr. P. T. RAJAN:—"Sir, I do not know what exactly Mr. Basheer Ahmed's point is. There are two kinds of debentures: Debentures carrying Government guarantee and debentures which do not carry Government guarantee. In so far as debentures which carry Government guarantee are concerned, they will not be affected by any subsequent changes. My hon. Friend Mr. Muniswami Nayudu's point is that when further amounts are guaranteed by the Government as regards fresh debentures to be issued by the banks, the Council should be given an opportunity to express its views. That I am perfectly willing to accept. My hon. Friend, Mr. Ranganatha Mudaliyar, pointed out, I believe, that this may not be approved by the Government of India on the analogy that the Local Governments are not allowed by

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the Government of India to place the rules framed under any Act before the Legislative Council for their approval. I do not think there is any analogy between the two. I do not anticipate therefore that the Government of India are likely to object to this course. So far as this Government is concerned, I have already accepted the amendment."

* Dr. P. SUBBARAYAN:—"Mr. President, I would like to make a suggestion for your consideration before you put this clause finally to the vote of the House. I find that the Government amendment and the amendment accepted by the Government now, can be combined together and brought in as a single clause. This may be done by the Law Drafting Department during the luncheon interval and then brought up before the House after lunch."

* The Hon. Mr. P. T. RAJAN:—"I have no objection, Sir, to the course suggested if that will improve the wording of the clause."

The further consideration of clause 6 was then postponed till 3 o'clock.

Clause 6-A.

* The Hon. Mr. P. T. RAJAN:—"Sir, I move the following amendment:—

'6-A. The Local Government may, in their discretion, guarantee the principal of, and the interest on, any debentures issued before the commencement of this Act by the Board, subject to such conditions as the Local Government may think fit to impose.'

"Sir, the question of guaranteeing the debentures issued before the commencement of this Act is under the consideration of the Government and this amendment only gives discretion to the Government to guarantee such debentures. I hope this amendment will be accepted."

Mr. R. MADANAGOPAL NAYUDU:—"I second it."

* Mr. BASHEER AHMED SAYEED:—"May I rise to ask, Sir, why Government should have this discretion when they are being enabled to guarantee all the debentures that have been already issued? After all, whatever be the rate of interest, there are several debentures already issued. Why should they not all be guaranteed by the Government? They are going to do it only under certain conditions. If this is a measure intended to help the cultivators and ryots to get their debts cleared and their lands improved, why should discretion be vested in the Government? After all, the Government are guaranteeing only a very small amount. It should not be difficult for them to guarantee all the debentures already issued under conditions which they are going to impose."

* Mr. H. M. HOOD:—"Sir, may I say with regard to my hon. Friend, Mr. Basheer Ahmed's interrogation that there is considerable reason why the Government should not guarantee the debentures that

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carry as much as 6 per cent interest? If the debentures issued in the past are now guaranteed by the Government, the commitment of the Government would increase considerably and such guarantee would enhance the value of the debentures to debenture holders. I do not think there would be much ground for extending the guarantee to some of the past debentures. The reservation is made in this Bill that the Government is to guarantee on such conditions as seem proper and it will be a proper condition of guarantee that such debentures should not carry an extremely high rate of interest."

* Diwan Bahadur M. RAMACHANDRA RAO:—" May I explain, Sir, that the bank has been obliged during the last $2\frac{1}{2}$ years to issue debentures carrying different rates of interest? We began issuing debentures carrying 6 per cent interest per annum. Then, on account of conditions in the money market and the fact that the Government of India themselves offered as much as $6\frac{1}{2}$ per cent per annum, the bank was obliged to issue debentures at $6\frac{1}{2}$ per cent. This rate was not very successful; because the Government paper will certainly be preferred by investors in similar circumstances. Then we issued debentures at $6\frac{1}{4}$ per cent for some time and afterwards there was a rapid fall in the rate of interest in the money market. We then issued debentures at $5\frac{1}{2}$ per cent and now we are issuing at 5 per cent. Now the position is that these debentures carrying varying rates of interest have been issued to the public. The Government naturally feel that instead of guaranteeing the debentures which carry different rates of interest, we should bring down the interest on past debentures, by redemption or otherwise, to a standard rate. We are attempting that now. For example, the debentures that we issued carrying interest at $6\frac{1}{2}$ per cent per annum have been converted recently into debentures carrying 5 per cent. We have also other conversion schemes on hand and I believe that Government will be prepared to take up the question of guaranteeing the debentures as soon as this process of conversion is complete. I do not know what their intentions are at present. But, unless we adopt some rate which is above the rate of interest at which the Local Government borrow from the Government of India, our debentures would not find favour with the public. What that rate is to be is a matter for negotiation between the Government and the bank. I trust that it would be somewhere in the neighbourhood of 5 per cent or $5\frac{1}{2}$ per cent. As soon as all the past debentures are redeemed and the interest thereon is brought down to the same level, I expect there will be no difficulty, so far as I can see, for guaranteeing these debentures. At any rate, the Government have reserved the entire discretion to themselves. I am content to leave it at that because, I expect that in this matter the Government, who have done so much to secure the acceptance of these debentures as trust securities, would not hesitate to take necessary action in getting these past debentures also recognized as trust securities. I am content to leave it at that and I hope sincerely that the Government will take up, as early as possible, the question as to how many of

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these debentures already issued can immediately be recognized as trust securities, so that the public may have the satisfaction of seeing that their debentures already issued are not at a disadvantage compared with the debentures to be issued hereafter."

The amendment (clause 6-A) was put and carried.

Clause 7.

* The Hon. Mr. P. T. RAJAN:—"Mr. President, Sir, I beg to move— 12-15
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'that in line 2 for the words "subsidiary by-laws," substitute the word "regulations."'

"Sir, the Board is given power to make by-laws under the Madras Co-operative Act. Then in this Act itself under section 34, the Board is given power to make regulations. In order to avoid any confusion it is desirable to *delete* the words 'subsidiary by-laws' and *substitute* in their stead the word 'regulations.'"

Mr. H. M. HOOD:—"I second it."

The amendment was put to vote and carried.

Clause 7, as amended, was put and carried.

CHAPTER III.

Clauses 8 to 11.

Diwan Bahadur B. MUNISWAMI NAYUDU:—"Mr. President, Sir, I beg to move—

'to delete the clauses 8-11, i.e., the whole of Chapter III.'

"Sir, these clauses deal with the power of the Bank to distrain and sell the produce of the mortgaged land when there are arrears of instalments. Lower down in Chapter IV, the Bank is given power to bring the mortgaged property to sale without the intervention of the court, and also to have a receiver appointed, a nominee of its own. The original Bill, as introduced in the Council, aimed at vesting in the Bank greater power than what is contemplated now, that is, it gave power to the Bank to distrain the mortgaged property, not necessarily the standing crops thereon. But the Select Committee thought otherwise and so provided for the distraint of standing crops. Now the whole thing comes to this: the Bank which has advanced money to the people, whenever an instalment is not paid, has three remedies open to it. As per section 12, the Bank has power to bring the mortgaged property to sale. Another remedy open to it is to appoint a receiver, a nominee of its own, put him in charge of the property along with the standing crops, and if they are ready for harvest, carry on the harvest and remit the sale-proceeds towards the instalments which have fallen in arrears, or if the crops are not ready for harvest, take care of them till the time of harvest. The difficulty, the worry and the inconvenience that would be caused to the people by this procedure has been ably brought home

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by my hon. Friend, Mr. Ramalingam Chettiyar, in his dissenting minute, and it is no wonder that he suggested that the whole of this chapter should be deleted. It might be that the ryot might have borrowed the money for the cultivation of his land, the maintenance of his family and the payment of kist, etc. Perhaps he has to meet all these in addition to the instalment due to the Bank. If the produce is to be distrained for the mortgaged debt, his borrowings for other purposes would be surely affected and his credit would thus materially suffer. It may be that he might have agreed to sell the produce to merchants, from whom he had previously borrowed money, without creating any charge in their favour. Further it may be that the produce on the land might have been raised with money borrowed from a village landlord or a money-lender or a merchant. Thus the position of the mortgagor will become very difficult, as he will not be able to borrow money for cultivation and other expenses, once he mortgages his land to the Mortgage Bank.

"Again, Sir, this is a power which is likely to be abused, for section 8 says that the governing body of a Bank may authorize any person to distrain the produce of the mortgaged land including the standing crops thereon: so that this provision leaves the Bank power to distrain the produce and thus cripple the credit of the person himself and possibly drive anybody who takes a loan from the Bank from all sources of repayment. Ultimately this provision will drive the people who borrow money from the bank to depend entirely on the bank itself, instead of serving as one of their sources of borrowing money.

"You will find a similar provision in the Estates Land Act also. A provision similar to this was present in the Bengal Tenancy Act and similar Acts in the other Provinces of India. But barring Madras Province, in the other Provinces, more especially in Bengal, this power to distrain crops has been taken away more than ten years ago, and so I do not see any reason why we should add this power, instead of falling in line with other Provinces of India.

"In my opinion the third remedy, the mere threat of distraint is sufficient safeguard to put the borrower on his guard and make him pay his instalments without fail. This threat of distraint and the procedure contemplated lower down are more than abundant safeguards to secure the money of the bank and to make the borrower repay his loan without default. I, therefore, move, Sir, to omit clauses 8, 9, 10 and 11."

* MR. V. T. ARASU:—"Mr. President, Sir, I beg to second the motion, and in so doing I wish to say a few words. In my opinion the power of distraint ought certainly to be taken away from the hands of the primary bank, and if necessary, it may be vested in the Registrar of Co-operative Societies, who is an officer of the Government. Or, if the Registrar so wills it, he may, in his turn, authorize any other officer of the Government or a particular person working under him to distrain the property and take the necessary action in the matter. I think this

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is the proper course for Government to take in cases where people fail to pay their instalments. But on the other hand, the existing clause vests the power in the hands of the primary banks. Therefore I am in agreement with Mr. Muniswami Nayudu for the deletion of clauses 8 to 11."

* The Hon. Mr. P. T. RAJAN:—"Sir, as was pointed out by Mr. Muniswami Nayudu, in the original Bill, Government had given more powers to the bank in the collection of their dues. Subsequently the Select Committee whittled it down and confined it to distraint of produce of, and standing crops on, the mortgaged land. That was done to meet the wishes of the Select Committee half-way. Now my friend wants that the whole chapter should be deleted. Sir, a bank which lends money should surely have power to collect its dues, as otherwise the administration of the bank is likely to be dislocated. No doubt, the bank has got three remedies as suggested by Mr. Muniswami Nayudu. The first remedy that will be resorted to by the bank will, of course, be the threat of distraint so that people may not make any default in their payments. On the one hand, the Government have to safeguard the interests of the bank, and on the other hand it has got to see that the powers that are entrusted to the committee of the primary banks are not abused, for, owing to factions, the committee, without going through the usual procedure, might distrain the property of anyone whom they dislike. I think in the case of distraint, instead of the banks being allowed to distrain the property of the defaulter, if they are made to apply to the Registrar and the Registrar be asked to depute one of his officers to distrain the property, such a step would safeguard both the interests of the banks and the people. With this view I have made the following amendments which, I hope, would meet with the approval of the House. The amendment that I propose will run thus:—

Clause 8.

'Substitute the following for clause 8:—

"8. (1) *If any instalment payable under a mortgage executed in favour of a mortgage bank or any part of such instalment has remained unpaid for more than one month from the date on which it fell due, the Committee may, in addition to any other remedy available to the bank, apply to the Registrar to distrain the produce of the mortgaged land including the standing crops thereon. The Registrar may, on receipt of such application, notwithstanding anything contained in the Transfer of Property Act, 1882, authorize an officer of the department not lower than the rank of a Sub-Deputy Registrar to appoint an officer to distrain and sell*"

* Mr. BASHEER AHMED SAYEED:—"On a point of order, Sir, may I know from what paper the Hon. Minister is reading, Sir?"

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* The Hon. the PRESIDENT:—"He is proposing an amendment; the amendment was handed over to me just half an hour back and it is being roneoed."

* Mr. BASHEER AHMED SAYEED:—"Then I think the consideration of this amendment may be postponed, Sir."

* The Hon. the PRESIDENT:—"I may inform the hon. Member that the amendment is not now under consideration. The Hon. Minister is only reading his proposed amendment so that Mr. Muniswami Nayudu may withdraw his motion."

* Mr. BASHEER AHMED SAYEED:—"Then, I submit, Sir, he ought not to read anything from a paper which is not already in the possession of the House."

* The Hon. the PRESIDENT:—"Order, order, the Hon. Minister may proceed with his speech."

* The Hon. Mr. P. T. RAJAN:—

"such produce : provided that no distraint shall be made after the expiry of twelve months from the date on which the instalment fell due."

Clause 10.

Sub-clause (1).

In lines 4-5, for the words 'the distrainer may apply to the sale officer for the sale in auction of' substitute the following: 'the distraining officer may sell in auction.'

Omit the last sentence.

Sub-clause (2).

Omit this sub-clause.

Clause 11.

Omit sub-clause (1) of this clause.

Omit the brackets and number ' (2) ' in sub-clause (2).

Renumber sub-clauses (iv) and (v) as (v) and (vi), respectively and insert the following as sub-clause (iv), namely:—

'(iv) for determining the proportion of the sale-proceeds which should be credited to the Government on account of the expenses of the distraint and the costs of the sale.'

* The Hon. the PRESIDENT:—"May I suggest to the Hon. the Minister that the consideration of this clause may be taken up after lunch so that all the Members of this House may know exactly what is the scope of the amendment that he is going to move and if the amendment of Mr. Muniswami Nayudu is going to be withdrawn."

* The Hon. Mr. P. T. RAJAN:—"I have no objection to the amendment being taken up after lunch."

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The consideration of the amendment was accordingly adjourned till after lunch.

Clause 12.

* The Hon. Mr. P. T. RAJAN:—"I beg to move the amendment standing in my name which runs as follows:—

- (i) *In lines 1 and 2, after the words and figures "Notwithstanding anything contained in the Transfer of Property Act, 1882" insert the words and figures "or in the Trustees' and Mortgagees' Powers Act, 1866."*
- (ii) *In line 5, for the words "governing body," substitute the word "Committee."*
- (iii) *In lines 7-9, for the words "shall have power, in addition to any other remedy available to the bank in default of payment of the mortgage money or any part thereof," substitute the words "shall, in cases of default of payment of the mortgage money or any part thereof, have power, in addition to any other remedy available to the bank."*
- (iv) *Number the two sentences of this clause as sub-clauses (1) and (2) respectively.*
- (v) *For sub-clause (2) as so numbered, substitute the following:—*
 - "(2) *No such power shall be exercised unless and until—*
 - (a) *the Board has previously authorized the exercise of the power conferred by sub-section (1), after hearing the objections, if any, of the mortgagor or mortgagors;*
 - (b) *notice in writing requiring payment of such mortgage money or part has been served upon:*
 - (i) *the mortgagor or each of the mortgagors;*
 - (ii) *any person who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the same;*
 - (iii) *any surety for the payment of the mortgage debt or any part thereof; and*
 - (iv) *any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property; and*
 - (c) *default has been made in payment of such mortgage money or part for three months after such service."*

The Hon. Diwan Bahadur S. KUMARASWAMI REDDIYAR:—"I second it."

Diwan Bahadur B. MUNISWAMI NAYUDU:—"Sir, there is an amendment standing in my name in the same clause which runs as follows:—

"In line 2, for the word "whether" substitute the word "where" and in line 5 omit the words "or not"."

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Sir, the provisions of chapter IV, i.e., clauses 12 to 17 are practically copied from section 69 of the Transfer of Property Act under which there exists an agreement between the mortgagor and mortgagee in the deed of mortgage itself that the mortgagee shall have power, without the intervention of court, to sell the property. Section 69 of the Transfer of Property Act as amended up to 1929 provides for such power to the mortgagee to bring the property to sale without the intervention of court in specific cases. That section runs:—

‘The mortgagee shall have power to sell or concur in selling in default of payment of the mortgage money, the mortgaged property or any part thereof without the intervention of the court in the following cases and in no others, namely:—

- (a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist, etc., etc.,
- (b) where a power of sale without the intervention of the court is expressly conferred on the mortgagee by the mortgage deed and the “mortgagee is the Secretary of State for India in Council”

This is a case where the Secretary of State is the mortgagee and on grounds of public policy that power to sell is given to him. Even then that power must be expressly conferred in the document itself—and

- (c) where a power of sale without the intervention of the court is expressly conferred on the mortgagee by the mortgage deed and the mortgaged property or any part thereof was on the date of execution of the mortgage deed situate within the towns of Calcutta, Madras, Bombay, Karachi, Rangoon, Moulmein, Bassein, Akyab or in any other town or area which the Governor-General in Council may by notification in the *Gazette of India* specify in this behalf.’

That, again, is in favour of mortgagees and properties situated in the Presidency towns mentioned above will be governed by this section. Even then there must be express power conferred on the mortgagee in the mortgage deed itself. Sir, these are the three cases contemplated by section 69 of the Transfer of Property Act, viz., (1) the case of English mortgage, (2) where the mortgagee is the Secretary of State for India in Council and (3) where the properties are situated within the Presidency towns. In all these cases there must be express power conferred in the instrument itself by the mortgagor if the mortgagee agrees to sell the property on behalf of the mortgagor without the intervention of the court. What the proposed section under this Bill contemplates is that, where the mortgage document is taken in the name of the land mortgage bank, whether a power of sale without the intervention of the court is expressly conferred on the mortgage bank by the mortgage deed or not, the bank should be empowered to sell the property; and thus the mortgage bank should be placed in a superior position so that they can sell away the property of the mortgagor even if it is not stipulated to that effect in the document itself. The object of an express stipulation as mentioned above is that the mortgagor

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himself must have consented to his property being sold by the mortgagee without the intervention of court with the result that the mortgagor is estopped from contesting that the mortgage or the sale of property is invalid. Now so far as this Bill is concerned, the mortgage bank is going to be the mortgagee and it is proposed, whether the mortgagor agrees to the sale of his property by the bank or not, to confer the power of sale on the bank. This is an extension of the principle which has been made applicable to certain specific cases under the provisions of the Transfer of Property Act. I think therefore that while anybody may be anxious to see that the mortgage bank is armed with this power merely because the Government have guaranteed the principal and interest, it is rather too much on grounds of public policy to invest the bank with such a power. It is in that view I have given notice of my amendment. The section with my suggested amendment will read thus:—

‘Notwithstanding anything contained in the Transfer of Property Act, 1882, and where a power of sale without the intervention of the court is expressly conferred on the mortgage bank by the mortgage deed, the governing body of such bank, etc., etc.’

Therefore, I move this amendment. I think this amendment restricts the power of sale without the intervention of court only to cases where the mortgagor has himself agreed to such a sale. I think it is of the essence of the contract that when a person mortgages his property the property should be sold either by himself or with his consent or by a judicial order of the court. According to the section, as it stands, a person who is entitled to recover his money only through the order of a court or in a court auction is now going to be invested with a power which ought not to be given to him without the consent of the mortgagor, because hon. Members will see that section 20 contains rather very wide terms. It reads thus:—

‘When a sale has been made in professed exercise of a power of sale under section 12 and confirmed by the Board, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale or that due notice was not given or that the power was otherwise improperly or irregularly exercised but any person damaged by an unauthorized or improper or irregular exercise of the power shall have his remedy in damages against the mortgage bank.’

The point is that the person who has purchased the property shall have a title over it although the mortgagor may say that the sale is invalid and all that. But what I submit is that the mortgagor's remedy against the bank as mortgagee which has sold his property as his agent is only by way of damages. The whole thing therefore implies a sort of confidence which the mortgagor places in the mortgagee that he would exercise the power of sale regularly. Even in such cases where there is an agreement between the mortgagor and the mortgagee that the latter would not sell the property irregularly or improperly, I am afraid it would place the mortgagor at the mercy of the mortgagee, in this case the bank. I think it will also be unusual procedure for

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the bank to adopt if it were asked to stipulate in all cases that express power should be given to it by the mortgagor authorizing it to sell away the property in case of default. My amendment proposes that the bank should not be given such a power which it would otherwise have under the clause as it stands. Well, Sir, by all means let the legislature arm the bank with powers which are analogous to section 69 of the Transfer of Property Act, but I do not think a case has been made out for going beyond the provisions of that Act and cutting at the root of the principle that, unless the mortgage deed authorizes expressly the exercise of the power, that power should not be exercised. Therefore I move my amendment."

* Rao Bahadur Sir A. P. PATRO:—"Sir, I have great pleasure in seconding the amendment. We all agree that the bank should be empowered to realize the loans advanced by it in as summary a manner as possible. There is no question about the principle, but the procedure is very drastic and conflicts with the fundamental principles governing mortgages as laid down in the Transfer of Property Act. The hon. Mover has pointed out that there are three cases where the power to sell is vested in the mortgagee and this Bill proposes that notwithstanding the provisions of the Transfer of Property Act the power to sell should be vested in the bank. Whether there is any specific provision in the mortgage deed itself to that effect or not, it is proposed to give the power to sell to the bank so that the bank may be able to recover its dues by summary procedure. This is very drastic and I submit, Sir, that unless specific power is given in the mortgage deed itself, the mortgagee should have no power to adopt the summary procedure. It has also been pointed out that, apart from the provisions of the Transfer of Property Act, what we propose to give the purchaser is an absolute title to the property purchased notwithstanding the fact that there might have been no specific provision in the mortgage deed for the sale of the property and that no other investigation might have been made at the time of the sale. As a consequence, other persons who may have interest in the property are deprived of their right to contest the purchaser's right. All that they can do is to sue the mortgage bank for damages. In that case, who is to pay the damages? The bank, that is to say, the Government. It comes to this that the Government, the representatives of the people, will have to pay the damages for having permitted the bank to conduct the sale. Therefore while we are all anxious that the land mortgage bank should have enough powers to realize their dues in as speedy a manner as possible, we submit that the proposed procedure is inconsistent with the root principles of the Transfer of Property Act and should not be adopted.

"Let us take the analogy of the Estates Land Act. Under sections 112 and 113, an application is made to the Collector by the

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landholder for arrears of rent. Notice is issued to the parties concerned by the Collector and after that the procedure fixed for the summary sale of the defaulter's land is adopted. But in this case, the procedure of sale is proposed to be adopted not through the intervention of the court or any judicial authority, but by virtue of power vested in the mortgagee by this Act. In the absence of any provision for the intervention of judicial authorities to find out whether a proper enquiry has been made and whether proper procedure has been followed, it would be going too far to vest this power of sale in the mortgage bank. I think, Sir, that unless it is expressly stated so in the mortgage deed, the bank should have no power of adopting the summary procedure of sale of the property."

* Mr. K. P. RAMAN MENON:—"Mr. President, Sir, the position has been very clearly explained by the previous speakers. The Transfer of Property Act gives power to the mortgagor to sell the property only in three cases and those cases are mentioned specifically in section 69 of the Act. The section as it stands empowers the mortgage bank to sell the mortgaged property whether the power to sell is specifically reserved in the contract deed or not. That really goes much further than what is provided in the Transfer of Property Act. But the question arises: if we are anxious to arm the bank with powers to realize their money as speedily as possible, should you not give the bank the power to sell the land? In reply to that, Mr. Muniswami Nayudu has pointed out that over and above the remedies mentioned in the Bill itself, the power to sell the land may be specifically given to the mortgagee in the mortgage deed itself and that then there would be no difficulty whatsoever. What Mr. Muniswami Nayudu wants is to restrict the power to sell the land to cases where the mortgage deed expressly confers that power on the mortgage bank. It is very easy to insert such a covenant in such a document. The bank can have mortgage deed forms in which the power to sell is specifically conferred on the mortgage bank and then there will be no fear that the bank will be put off indefinitely from realizing its dues. It will be going too far to vest the power to sell in the bank whether such a power is given in the mortgage deed or not. Any power given to the bank should be confined to the provisions of the Transfer of Property Act and the interests of the bank will be sufficiently safeguarded if they insert a clause of the kind I have referred to in their mortgage deeds."

* Mr. H. M. HOOD:—"Mr. President, Sir, I do not propose to argue the legal aspect of the matter, particularly in view of the fact that the two hon. Members who have spoken just now are eminent lawyers. But I should like to draw the attention of the House to the effect of this amendment. If it were accepted, it would have the result that the whole of Chapter III would be inoperative in regard to the mortgages supporting debentures which have already been issued,

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because the clause in question which could be inserted in future mortgage deeds, has, I think, not actually been inserted in any of the mortgages supporting the debentures already issued. The Government will have to consider whether in regard to all these outstanding debentures they are to give the full and unqualified guarantee. The value of a debenture will depend very largely on the readiness with which the security can be realized and I think it will be generally agreed that this provision which is now in dispute will facilitate the quick realization of the bank's dues. Although it is contested that it would amount to some serious infringement of what have been considered to be the rights of mortgagors, it will result in the enhancement of the value of the security and consequent reduction in the rates of interest at which the ryot can borrow, for this depends on the rates at which debentures can be put on the market. I think that is an aspect of the matter which requires very careful consideration before the provision in the Bill is rejected."

Diwan Bahadur M. RAMACHANDRA RAO:—"Mr. President, Sir, I have heard the speeches of the hon. Mover and the hon. Member, Mr. Raman Menon, with great attention. I should have been glad to accept the amendment but for the fact that in the mortgages which have already been executed in favour of the bank and which amount to over Rs. 30 lakhs there is no such clause as the one suggested by Mr. Raman Menon. We could not have inserted any such condition unless we had had legislative sanction for it. Now, let me take section 69 of the Transfer of Property Act. Clause (a) relates to English mortgages. Clause (b) refers to the case where the power of sale without the intervention of the court is expressly conferred on the mortgagee by the mortgage deed, and the mortgagee is the Secretary of State for India in Council. Clause (c) refers to cases where a power of sale without the intervention of the court is expressly conferred on the mortgagee by the mortgage deed, and the mortgaged property or any part thereof, was on the date of the execution of the mortgage deed, situate within the towns of Calcutta, Madras, Bombay, etc. These are the three classes of cases referred to in section 69 of the Transfer of Property Act. The object of the clause in this Bill is deliberately to extend the right of sale and vest the same in the bank whether such a power is expressly mentioned in the mortgage deed or not. Indeed this was the recommendation of the Townsend Committee of which my hon. Friend, Mr. Ramalingam Chettiyar, also was a member. The Committee found that the provisions of the Transfer of Property Act were too restrictive and that a special provision was necessary in regard to the sale of property mortgaged to mortgage banks. (Interruption.) I do not want to extend this power unnecessarily, but there is this difficulty which has to be faced. From the time when the bank was established more than 3½ years ago till now, primary banks have obtained mortgage deeds which do not give them any power to sell the property mortgaged

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to them. That is why, we have advisedly provided in this section for the power of sale though it goes beyond the provisions of section 69 of the Transfer of Property Act.

“ With regard to Mr. Raman Menon’s suggestion that such a condition could be inserted in the mortgage documents, I agree. It could be inserted in future documents after this Bill is passed, but it could not have been done before. What we did till now was to follow the ordinary law and in all the mortgages we have entered into no such power has been taken and no such power could be taken. I submit that the amendment proposed by Mr. Muniswami Nayudu would make the provision too restrictive in its scope and we cannot enforce the provision relating to sale unless the power has been expressly given in the mortgage deed. I do not think any particular harm would be done by the giving of this power, though this power was not taken in the past by the bank. After all, these banks must have adequate means of realizing their dues and discharging their obligations to the debenture holders. We are carrying on our transactions under very stringent conditions. We borrow money from debenture holders. The bank is financed wholly by the flotation of debentures. If we do not regularly pay interest to the debenture holders twice a year, if we make default in the payment of interest for more than three months, the debenture holders can call up the principal amount formed under the debenture. That is the reason why we want adequate powers to realize our dues. We are not anxious to exercise arbitrary powers. What we are most anxious about is to be regular in the payment of interest to our debenture holders so that there may not be any default on our part. In the case of ordinary co-operative societies, if primary banks make default, they may request the Central Bank for an extension of time, but in the case of debentures floated by the Land Mortgage Bank one of the conditions is, if interest is not paid regularly twice a year and if there is a default in the payment of interest for more than three months, the debenture holders have a right to call for the whole principal at once. Therefore we want this power, not to put it to use unnecessarily in each and every case. I do not think we shall put in operation the power to distrain, the power to sell and the power to appoint a receiver all simultaneously. They would be used only one after another. The power to sell may not at all be necessary and it will be used only in the case of a man who persistently defaults. Of course if a man defaults persistently, it will be necessary to sell his holding.

“ Therefore I submit that this will put a restriction on the operation 1 p.m.
of the bank and it does not cover the cases of mortgages which have already been executed. This Bill has been pending for three years. If this Bill had been passed when this bank was started, we should have had no difficulty; but the bank was started some time back; we have gained certain experience and transactions amounting to nearly Rs. 30 lakhs have been entered into and mortgages have been taken by the

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primary banks without any such condition. If we are now to enforce the payment of interest by these mortgagors regularly, how are we to do it? (Rao Bahadur Sir A. P. Patro: 'You have got other provisions.') Other provisions would not work. I submit that this amendment is restrictive."

* The Hon. the PRESIDENT:—"To-day being Friday, the House will adjourn now and meet again at 3 p.m."

After Lunch (3 p.m.).

Diwan Bahadur M. RAMACHANDRA RAO:—"Sir, I was explaining the position as regards mortgages executed up till now. With regard to those mortgages also we should have ample power to enforce the provisions of Chapters 3 and 4 where there is default. The primary banks must be in a position to enforce the provisions of Chapters 3 and 4 with regard to the realization of arrears from mortgagors. That was the point I was explaining before the luncheon interval. If this amendment deprives us of the power of enforcing the payment of arrears in respect of past transactions, I said that difficulties would be caused to these banks. On that ground I said that the word 'where' substantially restricts the operation of section 12. I have since had a talk with the Advocate-General who was here just now and he is inclined to the view that it is safer to insert a provision that the provisions of Chapters 3 and 4 should be made applicable to past transactions also. There must be a specific provision to this effect. I have drafted an amendment to that effect and I am handing it over to the Secretary. I am placing this matter before hon. Members because it is really a very important matter and the House may consider whether it is not worth while that primary banks must be armed with the necessary power of exercising the provisions of Chapters 3 and 4, and whether there should be any distinction between future transactions and past transactions. I submit that such a provision is quite necessary. The only way in which we can do it is by an express provision that the powers conferred by the provisions of Chapters 3 and 4 could be exercised by the banks not only in respect of future transactions but also in respect of mortgages executed before the commencement of this Act."

* Mr. BASHEER AHMED SAYEED:—"Mr. President, Sir, the Expert Member has already forestalled the objection that I wanted to take. I am of the opinion that the provisions of clause 12 as it stands cannot be made applicable to past transactions with the bank; because the language of the clause is 'whether a power of sale without the intervention of the court is expressly conferred on the mortgage bank by the mortgage deed or not.' When such a provision is passed, it will only apply to future transactions; it cannot be made applicable to past transactions and there is no amendment just now before us to give retrospective effect to transactions that have already been entered into."

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Even then it will not be fair that the Government should vest the bank with this power of sale without taking the consent of the party who has executed the mortgage. It will not be fair to give this power by this enactment without taking into consideration the terms of the contract that has already been entered into. It may be that the mortgagor might have given this power of sale to some other mortgagee; if the power is given to some other mortgagee, the bank cannot get that power over again. We cannot take away the right a third person has acquired, by this enactment and vest it in the bank. That will be very improper and inconceivable from the point of view of legal rights and obligations. How the Government themselves, rather the framers of this Bill, are conscious of this extraordinary power they are taking is evident from sub-clause (b) by which they hem the power with this condition. Sub-clause (a) says that notice in writing should be served; sub-clause (b) says that the board should have previously authorized the exercise of the power conferred by this section after hearing the objections, if any, of the mortgagor or the mortgagors. Such a thing does not obtain in the Transfer of Property Act. That the framers of the Bill are not quite sure of their ground, that this is merely an extraordinary power that they are taking, over and above what is contained in the Transfer of Property Act, is evident from this clause which compels them to hear objections of the mortgagors and others.

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“There is another point, Sir, which I would like to raise in this connexion. Is this power intended to be exercised only by the Central Mortgage Bank or the Primary Mortgage Bank or is it also to be exercised by any other person who becomes a transferee from the bank? That has not been provided for in this clause. If the power is going to be exercised also by the transferee, there must be a specific provision to that effect. It is quite easy for the Government to bring forward any amendment on the spur of the moment and ask us to be dragooned into that. I know the President is very kind and wants work to be expedited; he gives leave and suspends the standing orders. But should the Government take advantage of that indulgence so often as they are doing? If they have not prepared all the amendments, if they are serious about this measure—no one of course belittles the importance of the measure—it is very important and it has far-reaching consequences—why should they hurry it like this? The Government have come forward for the first time saying that they would give guarantee for the debentures which are going to be issued by the bank. It is indeed a great step. Let us then have all things well considered. Let this measure not be a hasty one and be brought back to the Council time and again for amendments and modifications. That is a very bad procedure that we have been following for some time past. I would urge on the Hon. the Minister and his advisers that more time should be given for considering the further implications of the various clauses of the Bill and that a consolidated list of amendments may be put before us. We may then be in a

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position to gauge how exactly the present relationship between money-lenders, creditors and borrowers will be effected by this enactment. That will be fair to all the parties and all the interests concerned. Coming back to the point at issue, I may say that it is highly pernicious that this power should be vested in the mortgage bank, without the necessity to resort to court. There is the Imperial Bank of India. Does that bank have the power of sale without resort to court? The Imperial Bank of India has been doing business in regard to properties which are very valuable—both immovable properties within the City of Madras and other securities outside the Presidency town, e.g., in big centres where the bank has got its own branches. So, when the Imperial Bank itself does not have such a power, why this mortgage bank should have it, I cannot see.

“Then, Sir, there is a confusion between the Government giving a guarantee for the debentures and the rights of borrowers from the bank as such. No doubt the Government have come forward to guarantee the debentures issued by the bank; but that does not mean that the Government's position is affected at each and every stage of the transaction between the bank and the parties. Not at all. Why should the bank stand in this peculiar position? Besides, if we are going to give this power of sale to the bank without recourse to the court, what are the safeguards against the abuse of such a power? The preliminaries to be complied with will in practice amount to nothing. They will not give any adequate relief or facility to the borrower. The very moment the borrowers come to know that such great and uncalled for provisions are there, that the mortgage bank will proceed without even complying in fact with certain provisions of the Transfer of Property Act, they will cease to borrow. Even if they borrow, there is always the fear that the next moment, their credit will be lost. If this power is still to be exercised, then how are you going to improve the credit of the borrowers? Their position will not be bettered by any loan from the central mortgage bank or a primary mortgage bank. They may have to borrow further amounts for clearing off their debts. In that case, the moment this power is exercised, the other money-lenders will not come forward and the credit of the borrower will be lost. I therefore say, from all these points of view, this power should not be vested in the bank, and the amendment of Mr. Muniswami Nayudu is the most desirable amendment, to be accepted by the House, if such a power is still to be vested in the bank.”

* Rao Bahadur T. A. RAMALINGAM CHETTIYAR:—“Sir, I fear we are fighting about a shadow. I think it is admitted that so far as the future is concerned, the position is easy enough, and a clause may be added in the mortgage documents granting the power of sale to the bank. Just now the Hon. the Minister stated that he has been advised by the Advocate-General that this clause won't apply to past transactions. The position is that this clause as it is, whether amended or

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not, won't apply to any past transactions. (Mr. Basheer Ahmed Sayeed: 'Then you do not require this clause.') No, this clause is necessary. It seems to me there is no object in asking for the retention of the words 'whether it is in the document or not,' because we can always include this provision in the document itself for the future. But the real question will come up when our Expert Member will move his motion to apply the provision to past transactions also. That motion may be discussed in detail on its merits; but for the present I really think we are fighting about a shadow. I would suggest that the amendment of Mr. Muniswami Nayudu may be accepted, so that we can make this a rule hereafter in the case of all future mortgages. I think that is the proper procedure. We need not now make any exception to the ordinary rule of contract. The ordinary rule of contract is that unless there is a power vested in the mortgagee, he has no power of sale. The same rule may apply here, and it won't work any hardship on the bank or anybody else. I therefore suggest, Sir, that the amendment may be accepted and the new amendment which the hon. the Expert Member is going to move may be discussed later on."

Mr. C. BASU DEV:—"Mr. President, the discussion on this clause has centred round two specific points, the past and the future. With regard to the future, as Mr. Ramalingam Chettiyar stated, there is no difficulty and the amendment may be accepted; because we can always insist on the inclusion of a clause giving the right of sale. But with regard to past transactions, it is a misfortune that this House has not been given any information on the working of this bank which has been, as the Expert Member stated, operating for the last three and a half years. The Expert Member also told us that the bank has had dealings to the extent of about Rs. 30 lakhs; yet he did not think it fit to enlighten this hon. House in regard to the working of the bank. We are not even furnished with a copy of the administration report of the bank. That is the misfortune or the handicap under which this House suffers. Suddenly the Expert Member rises and flings a surprise on us saying that over Rs. 30 lakhs of transactions have taken place, and there must be a clause safeguarding the interests of the bank. Whatever it is, Sir, the debentures issued by the bank previous to the passing of the Act did not have the assurance that the Government at a future date would come forward and guarantee the principal and interest. There will be no harm done to debenture-holders if the Government should withhold the guarantee in respect of such debentures and only guarantee the principal and interest on the debentures to be issued after the date of the passing of this Act. I may warn the Expert Member, Sir, that he would have great difficulty in persuading this House to accept the amendment which he wants to move, that even in the case of all past transactions, the provisions of clause 12 should be made applicable. At the time when the present mortgages were entered into, there was no idea of the right of sale by the bank—it was not contemplated at

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all. I think it is not proper, nor does this House have the right, I think, to superimpose a condition on the mortgagor which was not at all contemplated at the time of the contract. With these words, Sir, I strongly support the amendment."

Diwan Bahadur M. RAMACHANDRA RAO:—"On a point of personal explanation, Sir. My friend who has just spoken said that I was springing surprises on the House by amendments before the House without telling him what exactly the present position of the bank is . . ."

Mr. C. BASU DEV:—"I did not say that he was springing surprises by way of amendments; I only said that he rose up suddenly and flung surprise on us by saying that the bank had been operating for the past three and a half years with transactions to its credit of over Rs. 30 lakhs, and yet this House was absolutely in ignorance of the working of this bank. I only said that the House should have some more information on the working of the bank."

Diwan Bahadur M. RAMACHANDRA RAO:—"I would only say that the annual administration report of the department of Co-operation which is supplied to every Member of this House, contains the details of the working of this bank, the extent of its operations and the way in which the bank has been working. I believe that report is circulated to Members of this House. If that is not so, and if any Member who took any interest in the affairs of the bank had applied to us for copies of the administration report of the bank, I should only have been too happy to supply him with a copy of the report. So far as I know, not a single member has asked for a copy of the administration report. There are many gentlemen here who are members and shareholders of our bank."

* The Hon. the PRESIDENT:—"I do not know how far the hon. Member's speech is a personal explanation."

Diwan Bahadur M. RAMACHANDRA RAO:—"Because the Member charged me with springing surprises on the House, I am bound to say that we were not responsible for it. The hon. Member has information at his disposal in the published documents which are furnished to the Members of this hon. House."

* The Hon. Mr. P. T. RAJAN:—"In view of the fact that the Expert Member has given notice of an amendment to be moved later on stating that the clause should have retrospective effect, and as that amendment will come up before the House for discussion later on, I accept the amendment moved by my Friend, Mr. Muniswami Nayudu."

* The Hon. the PRESIDENT:—"The question is—

'In line 2, for the word "whether" substitute the word "where" and in line 5, omit the words "or not".'

The amendment was carried.

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The Hon. the PRESIDENT:—"Is the House ready for a vote on the amendment of the Hon. the Minister?"

Diwan Bahadur M. RAMACHANDRA RAO:—"I have an amendment in regard to clause 12 (2). It is only a rearrangement of words in the clause, with the omission of a few words. It is—

'In the amendment proposed by the Hon. the Minister to clause 12, on page 4 of the printed list of amendments, for sub-clause (2), substitute the following:—

"(2) No such power shall be exercised unless and until—

(a) the Board has previously authorized the exercise of the power conferred by sub-section (1),

(b) notice in writing requiring payment of such mortgage money or part thereof, has been served by the Committee or a person authorized by such committee upon (i) the mortgagor or each of the mortgagors; (ii) any person who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the same; (iii) any surety for the payment of the mortgage debt or any part thereof; (iv) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property; and until their objections, if any, have been heard;

(c) default has been made in payment of such mortgage money or part for three months after such service ".

"My purpose in rearranging this clause as suggested is this. We do not want these powers to be exercised by every primary bank without being subjected to the control of the central bank. We propose to authorize selected banks to exercise the powers conferred by section (1). The primary banks should give notice and hear objections, if any but before they exercise these powers the central bank will select banks (primary) who are to exercise this power. I have discussed with the Hon. the Minister and explained the object of this amendment. Instead of the central bank hearing the objections—this will be somewhat of a difficult task for the central banks situated in Madras—it would be easier if the primary bank hears them and disposes of them instead of the central bank. Instead of each primary bank having the power of sale, we shall authorize banks who should exercise this power of sale. This is the object of this amendment. I have seen the amendment of the Hon. Minister on the agenda paper and this is but a slight rearrangement of the same amendment. Hon. Members will notice that the Hon. Minister has given notice of an amendment to clause 12 which is found

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on page 4 of the agenda. It is exactly the same except with very slight alterations. The Hon. Minister's amendment (a) and (b) under sub-clause (2) reads 'No such power shall be exercised unless and until (a) the Board has previously authorized the exercise of the power conferred by sub-section (1) after hearing the objections, if any, of the mortgagor or mortgagors, (b) notice in writing requiring payment of such mortgage money or part has been served upon.' The following words occurring in 2 (a) of the Hon. Minister's amendment have been transferred under clause (iv) and in 2 (b) of the Hon. Minister's amendment the following words have been added after the word 'served' in the second line: 'by the Committee or a person authorized by such Committee upon.' My amendment is the same as that of the Hon. Minister with the exception that the duty of hearing objection is sought to be transferred to the primary banks instead of the central bank."

Mr. H. M. Hood:—"I second it."

* Rao Bahadur T. A. RAMALINGM CHETTIYAR:—"Mr. President, Sir, I am sorry I cannot agree with the amendment that has now been proposed by the Expert Member. It was discussed at very great length at the Select Committee and if the provision as it appears here was made Sir, what happens is this: The right or rather the power of sale is vested in the creditor himself. We have to realize this fact. The village banks or the primary banks is the creditor and the power of sale is going to be vested in that bank itself. I am afraid Mr. Ramachandra Rao also wants to have the power of hearing objections and deciding them vested in the primary banks. If the matter is really mentioned in that way, it will convince the hon. Members of this House that it is a very unsatisfactory state of affairs. The Select Committee thought that there should be somebody intervening to hear objections and decide them. So they provided that that power of hearing objections may vest in the Central Bank. That being the result of the amendment, I suppose nobody will be in favour of giving that power to the creditor himself. After all, even though the Board may be interested in the mortgage it is not directly interested in the same way as the primary bank and seeing the composition of the Board it will be naturally a better agency for deciding these things in a disinterested manner than the primary banks. That is why this power was vested in the Central Bank and I do not think we can go back upon this especially after we have considered this at great length in the Select Committee itself and have come to this conclusion. I do not think we would be justified in going back."

* Mr. K. P. RAMAN MENON:—"Mr. President, Sir, from what has fallen from my hon. Friend, Mr. Ramalingam Chettiyar, the position comes to this. The plaintiff and the Judge is the same individual. This certainly is atrocious to anybody either a lawyer or to a layman. Then again, Sir, considering that there is considerable difference in

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the personnel of the Central Bank and the Primary Bank, naturally one might expect the former to look into these things from a judicial point of view.

"Sir, I have to protest against the way in which the Bill is being discussed here. The Bill as originally introduced into this Council, is hardly recognizable as the one that has emerged from the Select Committee and then at this stage when it comes to the Council for consideration in almost the final stage, amendments to section after section are being received even from the Government side. What are we here for? Are we sitting in a Committee? I protest that the Bill of this nature should not be rushed through without our being in a position to study the effects of the various amendments which are redrafted and re-cast at every stage, and the Bill has become absolutely not recognizable with the old Bill."

Mr. H. M. Hood:—"Mr. President, Sir, I do not think it is quite so horrible as it has . . ."

* The Hon. the PRESIDENT:—"The Hon. Member has already seconded the motion and as such cannot once again speak on the motion."

* Rao Bahadur Sir A. P. PATRO:—"Mr. President, Sir, I am at a loss to understand the position of the Government in regard to this Bill. This Bill, as it was drafted and introduced into this House, is unidentifiable with the Bill as it emerged from the Select Committee. Now even to the Bill as it emerged from the Select Committee, the Government gave notice of several amendments. This morning we received some and just now some more amendments have been placed in our hands in respect of clauses 6, 8, 11, 17 and 27. I do not know whether the Government means seriously that this House should consider every amendment that is being circulated to us. This Bill certainly is a very important measure and it deserves all the care and attention we could give it but we have hardly any opportunity of studying the effect of each amendment. In addition to this, we are given amendments by the hon. the Expert Member which are directly opposed to the printed amendments of the Government. According to the amendments given notice of by Hon. Minister, the Central Bank was vested with the power of hearing objections but now the Expert Member has given notice of an amendment to the effect that these powers should be exercised by the Primary Bank which will be selected by the Central Bank. I am not able to understand the position taken by the Finance Secretary (Mr. H. M. Hood), who has had very great experience as Registrar of Co-operative Societies and who has seconded the motion, nor that of the Expert Member. Evidently I take it that the Government accept the amendment of the Expert Member. If I am correct in my understanding of the position of the Government, it is, I should say, 'Woe to

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people.' Where are we? The position is becoming, if I may use the expression, quite intolerable for the House. An amendment of this kind which the Government have definitely committed themselves to this morning is sought to be replaced by another, the effect of which is very drastic in that the primary bank has the right of investigating into any claims of hearing objections and deciding the matter. What then has the Central Bank to do? I fail to understand what it is for, if it is not to discharge the function of enquiry into claims and objections. The primary banks have become the plaintiffs and the judges themselves, decree-holders and executors also. I therefore strongly oppose the amendment of the Expert Member and am in favour of the amendment suggested by the Government, viz., that the Central Board after hearing objections should take such steps as may be prescribed. I cannot, with my experience and knowledge of these Co-operative Societies and the way in which they have been formed, lend my support to the amendment of the Expert Member."

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* The Hon. the PRESIDENT:—"I wish to make the point quite clear. Certain hon. Members have made a serious suggestion that the amendments have been sprung upon the Council all on a sudden. I quite agree. But, no hon. Member seems to be serious about moving for an adjournment of the consideration of the Bill. The only conclusion that I can arrive at is that hon. Members opposite are also quite anxious to go through the Bill. Though the amendments have been received in the office rather late, we have been making every arrangement to circulate them as early as possible."

Mr. SAMI VENKATACHALAM CHETTI:—"That is very good of the Office."

Dr P. SUBBARAYAN:—"We are not getting them."

* The Hon. the PRESIDENT:—"When there is no attempt on the part of hon Members to postpone the consideration of the Bill, it is much better that such serious objection is not taken and the Members co-operate with the Government to get through the Bill."

Mr. SAMI VENKATACHALAM CHETTI:—"So, the Government is anxious."

* The Hon. the PRESIDENT:—"Hon. Members opposite as well as the Government are anxious to go through the Bill."

* The Hon. Mr. P. T. RAJAN:—"Mr. President, no doubt the Government would have accepted the Bill, as amended by the Select Committee, but knowing the importance and the implications contained in the objections, I thought it would be better to give every opportunity to the Members of the House and that is why I allowed amendments and was willing to consider any suggestions made by hon. Members. As a result of that and as a result of the discussions I have had with certain leading Members of the Opposition and also my party men, certain amendments have been circulated, so that they

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may be accepted by the House. That is the only reason that I can give for the number of amendments which have been circulated to the Members of the House rather late in the day. Most of the amendments given notice of by me, I may say, are merely verbal ones. After all, the House should remember that an attempt was made to bring forward the Bill about a year or so ago and it was with great difficulty that we could persuade the Government of India to agree to treat the debentures issued by the Central Land Mortgage Bank as trustee securities. Unfortunately the sanction of the Government of India to the amendments reached us rather late; otherwise all these amendments would have been handed to the Members earlier.

“ Now, Sir, coming to the amendment moved by my hon. Friend, the Expert Member, originally the idea was that objections should be heard by the Central Board. Subsequently, it was thought that it might cause a lot of trouble and a lot of money for the people who have to come all the way from the mufassal to Madras and so it was suggested that objections might be heard by the Primary Banks. The matter is now before the House and if the House is not willing to accept the amendment, I hope the Expert Member would have no objection to withdraw his amendment.”

* Diwan Bahadur B. MUNISWAMI NAYUDU :—“ I should first like to deal with the amendment of the Hon. the Minister and then the amendment of the Expert Member. Usually, when the Primary Mortgage Bank applies for permission to the Central Bank in respect of powers to sell under section 12, one would naturally expect that it should have taken all the precautions to find out what the objections might be and make out a case for this extraordinary power being given to them. The Act requires that the Central Board should also give its approval. So, it is naturally expected that the Central Board should have some material to see whether such power could be invested to the Primary Bank. The Central Board would then be in a position to hear objections, if there be any, from the persons who will be affected. Further, the persons who will be affected, will, in the first instance, go to the Primary Bank and when the Primary Bank overrules the objections, they would have the right to appeal to the Central Board. I feel the Central Board should not be a sort of post office between the persons affected and the Primary Banks. If the Central Board is to be a sort of arbitrator, then this power should not be transferred to the Primary Bank. So, if the Central Bank is to do the work satisfactorily, it should be given an opportunity, or at any rate, the parties should be given an opportunity when notice is given to them, to go and urge their objections before the Central Board. If the objections of the parties do not find favour with the Primary Bank, they may probably find favour with the Central Board which will be in a position to see to what extent the Primary Bank is right or not. For these reasons, it is better, if the Central Bank is

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to give its final approval, it should be in a position to hear objections and give a dispassionate opinion and give its seal of approval.

"The amendment moved by the Hon. the Minister evidently gives that power to the Board to hear such objections, but the amendment moved by my hon. Friend, Mr. Ramachandra Rao, presupposes that all the things should be done by the Primary Banks and nothing should be done by the Central Bank, except to give sanction on a mere application made by the Primary Bank. I therefore think that the amendment moved by the Hon. the Minister might be accepted."

Diwan Bahadur M. RAMACHANDRA RAO:—"Mr. President, Sir, I do not wish to press my amendment. The real difficulty that I was feeling was the question of distance from the point of view of the mortgagor to come to Madras to urge his objections. If the hon. Members prefer the amendment of the Hon. Minister by all means they can have it and I have no objection to it."

The amendment of Mr. Ramachandra Rao was, by leave, withdrawn.

* The Hon. the PRESIDENT:—"I hope the House is ready for a vote on the other amendments of the Hon. Minister.

"The question is:

- (i) In lines 1 and 2, *after* the words and figures "Notwithstanding anything contained in the Transfer of Property Act, 1882" *insert* the words and figures "on in the Trustees' and Mortgagees' Powers Act, 1866."
- (ii) In line 5, *for* the words "governing body," *substitute* the word "Committee."
- (iii) In lines 7-9, *for* the words "shall have power, in addition to any other remedy available to the bank in default of payment of the mortgage money or any part thereof," *substitute* the words "shall, in cases of default of payment of the mortgage money or any part thereof, have power, in addition to any other remedy available to the bank."
- (iv) Number the two sentences of this clause as sub-clauses (1) and (2) respectively.
- (v) *For* sub-clause (2) as so numbered, *substitute* the following:—
 - "(2) No such power shall be exercised unless and until—
 - (a) the Board has previously authorized the exercise of the power conferred by sub-section (1), after hearing the objections, if any, of the mortgagor or mortgagors;
 - (b) notice in writing requiring payment of such mortgage money or part has been served upon:
 - (i) the mortgagor or each of the mortgagors;
 - (ii) any person who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the same;
 - (iii) any surety for the payment of the mortgage debt or any part thereof; and
 - (iv) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property; and
 - (c) default has been made in payment of such mortgage money or part for three months after such service."

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Mr. K. P. RAMAN MENON:—" May I know, Sir, whether the previous amendment accepted by the Hon. Minister to change the word ' whether ' into ' where ' is also included? "

* The Hon. the PRESIDENT:—" Yes, with that amendment also." The amendment was carried.

Clause 12, as amended, was put and carried.

Clause 6.

* The Hon. Mr. P. T. RAJAN:—" Sir, I move that for this clause, substitute the following:—

- ' 6 (1) *The principal of and interest on the debentures issued under section 4 to such maximum amount as may be fixed by the Local Government and subject to such conditions as they may think fit to impose shall subject to the provisions of sub-section 3 carry the guarantee of the Local Government.*
- (2) *The Local Government may, after consulting the Legislative Council, increase the maximum amount of any guarantee given by them.*
- (3) *The Local Government may, after consulting the Board and the Trustee—*
- (a) *by notification in the Fort St. George Gazette, and*
 - (b) *by notice for not less than fourteen days in such of the principal newspapers in the Presidency of Madras and of the other provinces in British India as the Local Government may select in this behalf.*

discontinue any guarantee given by them or restrict the maximum amount thereof or modify the conditions subject to which it is given, with effect from a specified date, not being earlier than six months from the date of publication of the notification in the Fort St. George Gazette.

In cases where the maximum amount of the guarantee is to be restricted or the conditions subject to which the guarantee is given are to be modified, the notification and notice aforesaid shall set forth with sufficient clearness the scope and effect of the restriction or modification.

Explanation.—The withdrawal, restriction or modification of any guarantee under this sub-section, shall not affect in any way the guarantee carried by any debentures issued prior to the date on which such withdrawal, restriction or modification takes effect.'

" Sir, I have already explained at great length the scope of this amendment. This amendment has been arrived at as a result of our conversation and discussion on the floor of this House; and as a result

[Mr. P. T. Rajan]

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of agreement this amendment has now been moved. I hope the House will have no objection in accepting this amendment."

Mr. C. BASU DEV:—"Mr. President, Sir, I beg to second the amendment moved by the Hon. the Minister. In doing so, I wish to express that this amendment embodies all the opinions expressed on the floor of this House from all sides of the House (Mr. Basheer Ahmed: No), at any rate, as far as I understood. But, one feature of this amendment is that there is no mention about Government guarantee for the debentures already issued by the bank. I want to know if my interpretation of this amendment is correct or not. I take it that this amendment does not contain any provision by which Government is going to guarantee the debentures already issued by this bank."

* The Hon. the PRESIDENT:—"Am I to take it that the Hon. Mr. Muniswami Nayudu is withdrawing his amendment."

Diwan Bahadur B. MUNISWAMI NAYUDU:—"Sir, my point was that after this Act is passed, if any fresh guarantee is to be given, then at every stage the Council should be consulted, but the section as it is worded does not mention anything of that sort. The amendment as now proposed runs thus:

'The principal of and interest on the debentures issued under section 4 to such maximum amount as may be fixed by the Local Government and subject to such conditions as they may think fit to impose shall subject to the provisions of sub-section (3) carry the guarantee of the Local Government.'

The words used here are 'as may be fixed.' If the amendment had stated 'as already been fixed' it would carry out the object of my amendment. As the amendment stands, it may mean that after the passing of this Act Government may say, we have already fixed it and there will be no chance of discussing it again. So, it really does not carry out the object of my amendment. What I propose is that after the passing of this Act, if guarantee is to be given, it should come to the Council."

p.m.

* Dr. P. SUBBARAYAN:—"Mr. President, I believe the hon. Member's intention when he moved the amendment which is now supposed to have been incorporated in the amendment of the Hon. Member for Government was that the amount fixed for guarantee by Government should not exceed a certain figure. If this is accepted the Government may fix it at ten crores. I do not know if that is the intention of the mover or that of the Members of the House. If the Government think that fifty lakhs would be sufficient, I should be willing to put it down definitely as fifty lakhs. But I do not want to give this *carte blanche* to Government to fix the amount as they like."

* Mr. H. M. HOOD:—"May I draw the attention of the Hon. Members to the fact that when the amendment was drafted we considered Mr. Muniswami Nayudu's amendment, and his amendment

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[Mr. H. M. Hood]

is to the effect that the Government shall fix the maximum amount? His amendment contemplates the Government fixing the maximum in the first place. After the passing of the Act, if the Government were to extend the guarantee, they would come before the House according to the Act. This is the wording that is, I think, being followed in the amendment. There is some slight modification, but it is not such as would alter the meaning provided for in his amendment."

* The Hon. Mr. P. T. RAJAN:—"Sir, as has been pointed out by the Finance Secretary, the idea that Mr. Muniswami Nayudu wanted to convey by his amendment finds a place here. As a matter of fact Government guaranteed the interest on 50 lakhs so far. Now after the Bill is passed, we are going to guarantee principal and interest on future debentures. No amount has been fixed. I think Government may not guarantee more than fifty lakhs at a time. I am quite sure the Finance Department will certainly see that the Council gets an opportunity. I hope this assurance will be enough."

Diwan Bahadur B. MUNISWAMI NAYUDU:—"We have already passed clause 6 A, which says:

'The Local Government, may, in their discretion, guarantee the principal of, and the interest on, any debentures issued before the commencement of this Act by the Board, subject to such conditions as the Local Government may think fit to impose.'

"So in respect of debentures already issued there will be the statutory guarantee without having to come to the Council at all. My amendment was to make it come to this Council. So it cannot be held that we are putting the very same language without carrying out the object. The object of my amendment was if you give guarantee hereafter the Council should have an opportunity. With regard to the guarantee already given you have given the guarantee with regard to interest. Under section 6 you are giving guarantee to the principal also. With regard to them, you need not come to the Council at all. I only request Government to give the Council an opportunity to express its opinion when it gives a guarantee with regard to the past debentures though in respect of the future guarantees they may come to the Council. I hope the Government would so amend the draft at least in the third reading. Subject to that, if the Government are prepared to re-draft, I do not object at this stage. I would withdraw my amendment provided in respect of the future guarantees the Government would give the guarantee after consulting the Council."

* The Hon. Mr. P. T. RAJAN:—"If after the passing of this Act, when the question of guarantee comes up before the Government, certainly according to the resolution that has been accepted by the House, Government would naturally go to the House and place the matter before them before the guarantee is given."

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Diwan Bahadur B. MUNISWAMI NAYUDU:—"I withdraw."

The amendment was, by leave, withdrawn.

* The Hon. the PRESIDENT:—"It is also presumed that the printed amendment of the Hon. Minister is withdrawn."

The revised amendment under clause 6 was put and carried.

Clause 6, as amended, was put and carried.

Chapter III was then taken into consideration.

CHAPTER III.

Clause 8.

* The Hon. the PRESIDENT:—"Mr. Muniswami Nayudu has given notice of his amendment to delete Chapter III."

Diwan Bahadur B. MUNISWAMI NAYUDU:—"The Hon. Minister has given certain amendments. He must move them."

* The Hon. Mr. P. T. RAJAN:—"I move that the following be substituted for clause 8:—

' 8 (1) *If any instalment payable under a mortgage executed in favour of a mortgage bank or any part of such instalment has remained unpaid for more than one month from the date on which it fell due the Committee may, in addition to any other remedy available to the bank, apply to the Registrar or any officer authorized by him, for the recovery of such instalment or part by distraint and sale of the produce of the mortgaged land, including the standing crops thereon. On receipt of such application, the Registrar or such officer may, notwithstanding anything contained in the Transfer of Property Act, 1882, take such action as is necessary to distrain and sell such produce:*

Provided that no distraint shall be made after the expiry of twelve months from the date on which the instalment fell due.'

"I may point out to you, Sir, that this clause was drafted as a result of agreement between various sections of the House so that the power which has been given to the bank in order to safeguard the monetary interests might remain and at the same time such power may not be abused by the members of the governing body of the primary mortgage banks. We have so drafted that the distraint if it is to be made should be made on an application to the Registrar who would consider whether such a course is necessary after going into the pros and cons of the questions. This clause I am sure will meet the objections of the hon. Members who suggested that too much power is being vested in the Central Land Mortgage Bank."

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The Hon. the RAJA OF BOBBILI:—"I second it."

* Mr. BASHEER AHMED SAYEED:—"I find that the Hon. Minister has represented that there was agreement. But we have had no opportunity to discuss on this side of the House what the amendment is. I learn from the hon. Member for Chittoor that he was not a party to clause 8 as redrafted. That apart, the whole question now is whether the Mortgage Banks should have a power like this against the produce or the standing crops. That has been objected to on principle by this side of the House. The revised amendment is still objectionable. There are various Acts under which this distraint of movables has been given to various authorities. There are half a dozen Acts which say that such arrears will be treated as arrears of land revenue and recovered as such. I do not know among these many claimants which will get the priority and who will get this power actually exercised. Suppose even before an application is made by the bank some other creditors attach the standing crops what is to happen? In effect this power will not be efficacious. It may be very easy to add a provision like this but what is its ultimate value? The person himself might get a small cause suit decreed and get it attached. He might commit default and make the revenue authorities attach the standing crops. That being the case I do not see there is any necessity or use for such a power. Even if it exists it will be a dead letter. So I do not see why this provision should be retained. As it is this power has to be divided among a number of claimants under the Co-operative Societies Act, under the Motor Vehicles Taxation Act, under the Hindu Religious Endowments Act and what not. A number of Acts have the same remedy. So it is quite unnecessary and futile to have such a provision like this. It is better that the whole chapter is omitted. I do not think the members who have supported the deletion would be shifting their ground. I appeal to them to stick to their original decision that this power need not be vested in the bank."

* The Hon. the PRESIDENT:—"I wish to point out at this stage that unless the amendment to delete Chapter III is withdrawn or defeated we cannot proceed further with clause 8 and so on. I thought Mr. Muniswami Nayudu wanted to know the mind of the Hon. Minister. Now that he has moved he must decide whether he will press his amendment before we proceed further."

Diwan Bahadur B. MUNISWAMI NAYUDU:—"Sir, I am opposed to this power of distraint. The Hon. Minister said that he would give some kind of alternative to this. The amendments are there. I have my right to oppose section 8 even as amended. While reserving my right to oppose the new amendment, I withdraw my substantial amendment to delete Chapter III." 4-15 p.m.

The amendment of Diwan Bahadur B. Muniswami Nayudu to delete Chapter III was, by leave, withdrawn.

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* Mr. K. P. RAMAN MENON:—"Sir, I must express my agreement with the observations made by Mr. Basheer Ahmed on this amendment of the Hon. Minister. The clause as it stands in the Bill says that one month from the date on which it falls due, any person authorized by the governing body of such bank may, notwithstanding anything contained in the Transfer of Property Act, 1882, and in addition to any other remedy available to the bank, distrain the produce of the mortgaged land including the standing crops thereon. But, according to the amendment sought to be introduced by the Hon. Minister within one month from the date on which it fell due the Committee may, in addition to any other remedy available to the bank, apply to the Registrar or any officer authorized by him for the recovery of such instalment or part by distraint and sale of the produce of the mortgaged land, including the standing crops thereon. Now we have instead of 'any person being authorized to apply for distraint,' 'the Committee is asked to move the Registrar or any officer appointed by him for distraint.' The fundamental objection that we have to the powers of distraint still remains. As a matter of fact, how is the bank a more favoured creditor than the other creditors. Even with regard to landlords, you will remember, Sir, when the Malabar Tenancy Bill was being discussed, the question of giving power of distraint to the landholders was considered at length and was finally dropped because it was thought that it would lead to disturbances. Similarly, now if powers of distraint are conferred on the person interested in getting the distraint, it will work to the detriment of the persons who have borrowed from him. Speaking for myself, I am therefore against this power of distraint being given either to the committee or anybody else after the application to the Registrar.

"Then again, as has been pointed out earlier, there are other powers given to the bank under other sections of the Act. For example, a receiver can be appointed and there is section 12 which confers powers to sell the land itself. When these other remedies are available, it is not possible to see why the bank should be authorized to apply for distraint and then snatch the produce on the land. We are opposed to this very idea of distraint whether it comes as the outcome of an application to the Registrar or otherwise directly. The principle embodied in the amendment is altogether objectionable."

Mr. K. KOTI REDDI:—"Sir, before I move my amendment, may I speak on this amendment of the Hon. Minister?"

* The Hon. the PRESIDENT:—"The hon. Member may move his amendment and speak on this amendment also."

* Mr. K. KOTI REDDI:—"Sir, I move that—

'in line 3, for the word "one" substitute the word "two".'

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[Mr. K. Koti Reddi]

“ I am also very much opposed to this power of distraint being conferred on these banks. It should be noted that when we give this power, we are depriving the borrowers of the very source from which they are expected to pay the instalments. There are several powers conferred on the bank to realize its dues. There is the power to appoint a receiver and there is the power of sale of the property. It is very dangerous to grant this power of distraint in addition. I hope the Government will even now see its way to withdraw this power. The Hon. Minister's present amendment does not in any way improve matters. The bank can have easy access to the officers appointed by the Registrar under this section and get him agree with it as to the necessity for distraining the property. If this power is given, I am quite sure that in 99 cases out of 100, the bank will have its way. So this amendment does not in any way improve matters, and our objection to confer this power on the bank stands.

“ Now, Sir, coming to the amendment I have moved, seeing that the amendment to delete the whole of this chapter has been withdrawn by the Mover, I hope Government will sympathize with the borrower and grant him, as suggested by me, two months instead of one month, to pay up his dues after default. All that I am asking in my amendment is that the period may be extended to two months instead of one month. That will probably give the borrower a chance to pay the amount, especially in these bad days this latitude should be shown. Sir, we all want these mortgage banks to relieve the indebtedness of the ryots. But the Government do not seem to take into account the question of the extent to which the public revenues of this presidency are being mortgaged for the purpose of helping the mortgage banks to get money on low rates of interest. I find in this Bill no provision whatsoever to make the land mortgage banks or the primary banks advance loans to the borrowers at comparatively easy terms. Now that the Government have guaranteed the capital and the interest of these land mortgage banks which will enable them to get money at 3 per cent, or so; it has done nothing to prevent these banks lending at exorbitant rates of interest. When the public revenues of this presidency are mortgaged for these banks so as to induce the investors to give money at a low rate of interest, no power has been taken by the Government to see that the rates at which loans are given to the public are reasonable and do not exceed a certain maximum. I appeal to the Government to give some more time to the borrowers to pay up their dues. It may be said, Sir, this power will not ordinarily be used within one month. As our experience of such cases is different, I cannot but be apprehensive. I hope Government will accept my modest amendment.”

Mr. BASHEER AHMED SAYEED :—“ I second the amendment.”

* Sir A. P. PATRO :—“ Sir, on this question of the power of distraint, I would draw the attention of the House to the dissenting minute

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written by Mr. Ramalingam Chettiyar, who has been enthusiastically supporting the Land Mortgage Bank Bill. As I said this morning, he is considered as an expert member. Therefore it will be interesting to know his views on this question. I will better read his own words so that the House may be impressed with his knowledge and experience in matters of co-operation. He says:

‘I do not also agree that the remedy of distraint of the movable property of the mortgagor should be given to the banks in addition to the other special facilities provided for in the Bill. The clause as originally framed would have put the mortgagor completely at the mercy of the Land Mortgage Banks. The amendment made in the Select Committee has to a large extent restricted the power of distraint. Even so I consider it objectionable. The ryot borrows for the cultivation of his lands, the maintenance of his family and the payment of kist, etc. He has to pay out of his produce for all these in addition to paying the instalment due on the mortgage debt. If the produce can be distrained for the mortgage debt, his borrowings for other purposes will be affected and his credit will materially suffer.’

“Proceeding, he says:

‘It may be argued that the clause as amended by the Select Committee subjects only the produce of the property mortgaged to distraint by the mortgage bank. The mortgagor will in most cases have no other property. The produce on the land might have been raised with money borrowed from a rural co-operative society, a village landlord or a moneylender or a merchant. It will be very unjust if the Land Mortgage Bank has the land as security for its debt. The position of the mortgagor will become very difficult as he will not be able to borrow money for cultivation and other expenses once he mortgages his land to the mortgage bank.’”

Rao Bahadur A. T. PANNIRSELVAM:—“May I know, Sir, if it is necessary for any Member to quote from a dissenting minute which has been in our hands for so many months?”

* The Hon. the PRESIDENT:—“Whether it is necessary or not, the hon. Member has got the right to quote from it.”

* Rao Bahadur Sir A. P. PATRO:—“It is very necessary to repeat the words of the hon. Member (Mr. Ramalingam Chettiyar) for the information and enlightenment of the hon. Member from Tanjore (Mr. Pannirselvam). (Laughter.)

“To continue, Sir,

‘It should also be borne in mind that the Land Mortgage Bank does not serve as the ryot’s general bank and does not finance for his short-term needs. I would therefore delete the chapter relating to distraint of movable property.’ (Mr. Basheer Ahmed Sayeed: ‘Hear, hear.’)

“Now it is in these clear terms and in very strong language that the hon. Member from Coimbatore has expressed his views on this question. He was on the Select Committee and he had the advantage of listening to the discussion therein. He is in addition a co-operator and therefore his views must carry some weight with the House. In the light of his experience, I am inclined to agree with him and say that this power of distraint is a very sweeping power sought to be vested in a Committee. What we have seen of the exercise of this power by co-operative societies

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leave no doubt in our minds of the dangers of this power. It seems to me that, in order to create rural disturbances and in order to create rural unrest, there is no better method than vesting this power of distraint in the land mortgage banks. Already we have had so many instances where power has been exercised wrongly from a partisan point of view and we are now introducing this power which I only fear would be giving additional scope for the exercise of the partisan spirit. Therefore this aspect of the problem should not be lost sight of by hon. Members of the House. Partisans will be tempted to use this power sparingly against those who are in their favour and more liberally and frequently against those who belong to their opposite camp, if I may say so. Therefore, Sir, for the safety and peace of the rural areas I would suggest to Government not to press this amendment."

4-30
p.m.

* Rao Sahib N. SIVA RAJ:—"Mr. President, Sir, I must express my sense of surprise at the attitude taken up by some hon. Members on the opposite side of the House with regard to this amendment. I thought, Sir, that every person who had anything to do with the study and practice of law would be familiar with the principle underlying distraint. Sir, after all this is only, so to say, an interlocutory remedy by which the creditor is assured of the repayment of his debt, and the debtor, in his turn, is enabled to get back his land on the repayment of the loan. Sir, I am surprised that whereas in very many cases before, where similar provisions for regulating the conduct and relations of the creditor and debtor were brought, hon. Members agreed to them, they should now object to a similar one, when it is a case of the Land Mortgage Bank.

"Sir, the first point I wish to say in connexion with this question is that it is very necessary that in order to save the ryot from further indebtedness this power of distraint should be given to the Land Mortgage Bank. And as a matter of fact, this power is not going to be exercised by the Land Mortgage Bank directly. It has got to be exercised only after application to the Registrar, thereby giving the debtor enough time within which he can pay up the instalment even before the actual distraint is being applied.

"Secondly, I do not see any reason why distraint ought not be applied where it is a case of long term loan. I think the object of the Bill is to relieve the agriculturist from his proverbial indebtedness. This provision would really go to make him more thrifty and pay up his dues in time, because the instalment falls due only at long intervals.

"And then, Sir, the way in which my friends over there suggested that the whole chapter should be deleted, I am merely tempted to characterize as irresponsible with a vengeance particularly when Government funds are involved. We are all familiar with the various safeguards that the creditors take with a view to secure the loans that they may have advanced; and that being so, I do not see any reason why the

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Land Mortgage Bank should not secure their loans in this particular way. With these words, Sir, I support the amendment that has been moved by Government."

* Rao Bahadur A. T. PANNIRSELVAM:—"Mr. President, Sir, judging from the attitude taken up by hon. Members opposite this morning and now, one is led to wonder whether this Bill is really intended for the purpose of encouraging the establishment and working of the Land Mortgage Bank, or it be a Bill contemplated with a view to so manage things that the Land Mortgage Banks which are intended to lend money, shall have all sorts of obstructions put in their way of recovering their money. As has been explained by the hon. Member from Chittoor, there are three methods open to the Land Mortgage Bank for recovering the money lent out. One, and the most drastic remedy, is to bring the mortgaged property to sale outright. Another and less drastic, but certainly equally unwelcome to the debtor, is that of a receiver being appointed for the management of the mortgaged property; and the third, which, in my point of view, is not only not detrimental to the debtor, but which is actually generous and sympathetic to him, is to see that sufficient time is allowed to the defaulter, say one month from the date of default, so that he might pay the instalment without being put to any further discomfort, failing which an order of distraint is issued for the distraint of the produce of land together with the standing crops thereon. It seems to me, Sir, that by adopting such a procedure we would be really serving the interests of the debtor, as such a course would in reality be an urge even to the lukewarm debtor an opportunity to make his payment in time.

"I may further point out that this is not a method which we are introducing for the first time by this Act. It is a procedure which is sanctioned by so many other Acts, like the Revenue Recovery Act, under which a man who has not paid his revenues runs the risk of his standing crops being attached and sold and the proceeds of the sale being appropriated towards his revenue dues, at the instance of the village munsif. A similar provision also obtains in the Estates Land Act, though under that Act, the tenant is given the power of appeal to the Deputy Collector or the Collector to set up an inquiry into the matter. But in this case the provision is a little more advantageous to the debtor than the tenant under the Estates Land Act. For whereas the tenant under the Estates Land Act is given the power of appeal to the Deputy Collector or the Collector after attachment, in this Bill, it is provided that the Land Mortgage Bank shall not take action of its own accord but shall submit the case to the Registrar, who would certainly see that no hardship is done to the ryot unnecessarily. So we are here only introducing a provision already obtaining in the Revenue Recovery Act, to which we are not strangers at all. And the amendment proposed now certainly removes one of the objectionable features of the Bill as drafted by the Select Committee. We have now taken away the power given to

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the primary societies of distraint of property, which it was feared would be used by them for partisan purposes. And now that power is vested in the Registrar, who would certainly consider each case on its own merits leaving no opportunity for factious spirit to interfere on mere default of payment of instalments. Therefore I cannot understand why hon. Members opposite should oppose this amendment, which, after all, is a beneficial one both for the bank as well as the debtor, beneficial to the bank inasmuch as it safeguards the interests of the bank, and beneficial to the debtor, inasmuch as it enables him to repay his debts by easy instalments and thus helping him not to fall into arrears and ultimately swallowing his property. Therefore I feel this is a salutary provision and I have no hesitation in supporting it."

* Mr. A. RANGANATHA MUDALIYAR:—" Mr. President, Sir, I am glad to say that I am in agreement with my friend, Sir Patro (laughter) in regard to this matter. My pleasure is all the greater because such occasions are very rare indeed. (Laughter.) I am afraid the people who are agitating for the adoption of this provision do not know exactly the position of the ryots. My Friend, Mr. Pannirselvam, says that it is going to be a beneficial measure to the ryot, as after all it is only the standing crops that would be attached and not the land. I submit he does not know what is actually taking place with regard to the collection of land revenue. I know, for example, in some districts an attempt was made to postpone the collection of land revenue, but there was considerable opposition on the part of the Revenue officials, as they said that their task would afterwards become more difficult. Why? They thought that the crops could be easily attached and the ryots compelled to give the money and if the collection is postponed till after harvest, it would be difficult for them to collect the amount afterwards. But as a matter of fact, the postponement of collection while beneficial to the ryots has not prejudiced the collection of land revenue and I shall explain in a moment how. If the Government has the opportunity to attach the crops and sell them for arrears of revenue, the ryot finds himself driven to the need of somehow or other borrowing money and of paying the Government dues. That means he is obliged to borrow money at a high rate of interest, and after paying it to meet the demand of the Government, he finds himself compelled to sell his produce at a comparatively cheap price. Because when he borrows from the sowcar for the payment of Government revenue he gives an undertaking to repay the money immediately after harvest, and thus he is obliged to sell his produce for whatever price it may fetch at the time. A few months pass and there is scarcity of food for him. He has to borrow again, this time not to pay Government's dues but to purchase grain for his consumption, at a price far dearer than that at which he sold his grain earlier. So, Sir, I deprecate the introduction of any measure here which will have the effect of lowering still further the credit of the ryot. Even, as things are, there is very little for the

[Mr. A. Ranganatha Mudaliyar] [9th March 1934]

ryot to fall back upon. Why are you afraid of waiting for some time and giving the ryot a reasonable opportunity of finding the best value he could for his produce and paying the amount due by him to the Land Mortgage Bank at a time convenient to him? I am afraid, Sir, it is becoming an increasing fashion to make the standing crops responsible for the collection of all sorts of things. My hon. Friend, Mr. Pannirselvam already cited the Revenue Recovery Act. He also cited the Estates Land Act. I may mention also the Agriculturists' Loan Act, the Land Improvement Act, the recovery of the fines under the Forest Act, the Excise Act, and so on. I do not know how many more burdens are sought to be made, so to speak, a first charge upon standing crops. All I say is that it is a very bad policy, and I deprecate very strongly the present suggestion of the Government which will add to the burden of the ryot and lower his credit considerably, without any real advantage to the Government."

* Mr. V. T. ARASU:—"Mr. President, Sir, I must express my surprise at the remarks of the two hon. Gentlemen sitting opposite who have preceded me, when they said that we, sitting on this side of the House, are adopting an obstructive attitude in order to see that this Bill is not passed into law. I thought my hon. Friends, Mr. Pannirselvam and Mr. Sivaraj would have been more charitable to us; for as you yourself remarked a short while ago, Sir . . ."

Rao Bahadur A. T. PANNIRSELVAM:—"On a point of order, Sir, I never said that the hon. Members were adopting an obstructive attitude. I only said that they are crippling the power of the Land Mortgage Bank."

* Mr. V. T. ARASU:—"I accept the correction of the hon. Member from Tanjore. (Laughter.) Nevertheless, Sir, I should like to make it clear that it is far from our intention to see that the powers of the Government in this matter are crippled, or trimmed of its wings. (Laughter.) As regards the amendment itself I can understand the attitude taken up by certain hon. Gentlemen like Diwan Bahadur Muniswami Nayudu and Sir Patro, viz., that the power of distraint should not at all be invested in the hands of the primary banks. But I cannot understand the amendment moved by you hon. Friend, Mr. Koti Reddi, who suggested that instead of one month, two months' time should be given to the defaulter to pay his arrears. If two months' time is given, what will happen is that the crops will entirely disappear. As we all know any kind of crops is only seasonal and it will last from four to six months and if two months' time is allowed, the crops would entirely disappear and the primary bank would be left in the lurch and would not be able to recover its arrears. I therefore strongly oppose the amendment moved by hon. Friend Mr. Koti Reddi."

* Mr. M. DEVADASAN:—"In opposing the amendment moved by my Friend, Mr. Koti Reddi, I wish to make some remarks. In this connexion I should like to say that some of the arguments advanced by the

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previous speakers were based on the present economic depression of the country. Sir, we enact this Bill to apply, not for a short time, but for years to come. Because the conditions of the ryots are intolerable at present, we should not argue that this Bill should not be passed into law.

"Sir, some of my hon. Friends on the other side advanced their arguments from the point of view of a judgment-debtor and they have not fully considered the claims of the creditor. Of course, it may be unpleasant to resort to the procedure of distraint. In courts of law we find that worse remedy has been provided for the recovery of money due to a creditor. We see that judgment-debtors are arrested before judgment is passed and attachment of movable property belonging to them is also made before any decree is passed. We are put up with such a procedure in courts of law. That being so, the relief that is given to the creditors by a provision like this is not so great considering the terms that are offered to the debtors under this Bill. The loans extend to 20 years and the interest charged is only 7 per cent and the money is allowed to be paid by easy instalments. So, soon after the money falls due, it is the duty of the debtor to pay his dues to the creditor. If the creditor finds that money has not been forthcoming and it can be collected only by distraint of the produce on the land, he should be allowed to do so. Of course distraint will be an unpleasant thing to most of us but even worse remedies, as I said already, have been provided in law. I must point out another aspect of the transaction. In cases where usufructuary mortgages are executed by debtors, the mortgagee takes possession of the produce or gets into possession of the property itself. So, I cannot understand why the produce on the land which is the subject of mortgage should not be attached. Justice and reason require that a provision of this kind should be inserted in this Act. From my experience in the bar, I may say this relief is only a temporary one. It is not so bad as the one provided in clause 12 which results in forfeiture of property by sale or otherwise. Moreover it is only a permissive measure, and not a mandatory one since the clause says 'If any instalment payable under a mortgage executed in favour of a mortgage bank or any part of such instalment has remained unpaid for more than one month from the date on which it fell due, the committee may in addition to any other remedy available to the bank apply to the Registrar to distrain the produce of the mortgaged land.' It is only when the committee thinks that a relief of this kind may be resorted to, it may allow the sale of the produce of the land mortgaged.

"My Friend, Mr. Koti Reddi, said that two months' time should be allowed for the payment of arrears. As soon as the instalment falls due, it must be paid. For that I think one month's time is sufficient. I do not think that the provision is so hard or stringent as my hon. Friends who preceded me represented it to be. With these few words I support the amendment moved by the Hon. Minister."

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* Diwan Bahadur A. APPADURAI PILLAI:—"Sir, if I intervene in this debate at this last stage, it is merely to place before the hon. House one aspect of the matter which has not been dealt with by the previous speakers. Since Government intervene in the matter of land mortgage banks and guarantee the principal on the debenture as well as interest, somehow or other the money that is advanced by the land mortgage banks assumes the characteristic of public funds. We know that in regard to the recovery of public revenue from lands the Revenue Recovery Act applies as admitted by several of the hon. Members who have preceded me. In the case of recovery of land revenue provision is made for three modes of recovery—attachment and sale of movables, attachment and sale of immovable properties, and the arrest of the defaulter. In actual working, it has been found desirable that the land mortgage banks should be armed with the same power that is enjoyed by the Government under the Rent Revenue Recovery Act, apparently because the money advanced is guaranteed by Government and it becomes a part of public funds. From that point of view a major portion of the argument advanced by previous speakers against this amendment perhaps vanishes. The distraint process begins only one month after the arrears have fallen due. After distraint and attachment, there is clear fifteen days' time within which it is open to the defaulter to pay up the amount and take back his produce. There is no difficulty to proceed against the land, but I must remind the House that it is a very tedious process to attach the land and sell it. We know what amount of dilatory and obstructive tactics are adopted when we try to attach and sell immovable property. As President of one of the Central Banks in Madras, I have found to my regret that attachment and sale of immovable property was a hopeless process. When land is attached, there are objections and counter-objections and they have to be heard after notices are issued and duly served on the parties; a certain amount of time elapses in taking all these steps. Once action is taken to proceed against land new claimants crop up and say that the property is theirs. Several people that never claim possession of the property when loan is being granted come up all on a sudden and put forward objections. This is therefore a cumbrous procedure and it will take a number of months, perhaps years, to realize the arrears. In every primary society the people are very anxious to raise money by way of loans but they never care to repay the dues. In the case of the Land Mortgage Banks in order to expedite the collection of dues, it has been found necessary to introduce a clause of this kind with a view to help the banks in the matter of collection. I think the provision is not so very harmful as it appears on the surface. Mr. Koti Reddi's amendment provides two months' time instead of one month for collection of arrears before action is taken. My hon. Friend, Mr. Arasu, has already explained that within two months the crops could be harvested, thrashed and sold. I think one month's time is an ample period and this is the period allowed in

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the case of all other enactments. You will find from the Select Committee's Report and the minute of dissent attached thereto, that the hon. Member from Coimbatore refers to the way in which the Select Committee restricted the powers of distraint by the land mortgage banks. Apparently wiser counsels prevailed and as a result, distraint has been restricted only to the produce on the land for the collection of arrears. I may assure the Honourable House that attachment of crops is the only efficacious method of collection of arrears. From this point of view I make bold to support the amendment moved by the Hon. Minister in charge of the Bill."

At this stage the House adjourned to meet again at 11 a.m. the next day.

R. V. KRISHNA AYYAR,
Secretray to the Legislative Council.

